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Ontario Labour relations board
Report
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NUARY, 1966



ONTARIO

Monthly Report

NTARIO LABOUR RELATIONS BOARD

CASE LISTINGS JANUARY 1966

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THE BOARD NOTED THE ADMISSION OF THE RESPONDENT THAT PERSONS CLASSIFIED BY IT AS HEAD NURSES AND ASSISTANT HEAD NURSES DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE INCLUDED IN THE BARGAINING UNIT.

(SEE INDEXED ENDORSEMENT PAGE 743).

10998-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF PORT COLBORNE (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT PORT COLBORNE, SAVE AND EXCEPT CLERK-TREASURER, ASSISTANT CLERK-TREASURER, TOWN ENGINEER, CHIEF ASSESSOR, WORKS SUPERINTENDENT, TOWN FOREMAN, CONFIDENTIAL SECRETARY TO THE MAYOR AND THE CLERK-TREASURER, CONFIDENTIAL SECRETARY TO THE TOWN ENGINEER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT).

11008-65-R: LOCAL 280 OF THE HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION. A.F.L. C.I.O. C.L.C. (APPLICANT) V. WINDSOR ARMS HOTEL LIMITED (RESPONDENT).

UNIT: "ALL FULL-TIME AND PART-TIME TAPMEN, BARTENDERS, BEVERAGE WAITERS, BAR-BOYS AND IMPROVERS OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (6 EMPLOYEES IN THE UNIT).

11071-65-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. GROVES MEMORIAL COMMUNITY HOSPITAL (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS HOSPITAL IN FERGUS, SAVE AND EXCEPT CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

11091-65-R: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. AUTY PRINTING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN STREETSVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT).

11126-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. FRANKEL STRUCTURAL STEEL LIMITED (RESPONDENT) V. SHOPMEN'S LOCAL UNION #743 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFFILIATED WITH THE A.F.L.-C.I.O. C.L.C.) (INTERVENER #1) V. INTERNATIONAL RAIL CARRIERS BUILDING & COMMON LABOURERS UNION OF AMERICA, LOCAL 506 (INTERVENER #2). (3 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 744).

11180-65-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 42-L (APPLICANT) V. PROGRESS PRINTING LIMITED (RESPONDENT).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11194-65-R: DISTRICT 50, U.M.W.A. (APPLICANT) V. CHIPMAN CHEMICALS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT ON BURLINGTON STREET, HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, THE SENIOR CHEMIST AND LABORATORY TECHNICIANS."
(9 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT "OFFICE STAFF" INCLUDES ORDER CLERICAL STAFF.

11196-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, R.W.D.S.U. AFL:CIO: CLC (APPLICANT) V. ELLENZWEIG BAKERY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT).

11198-65-R: TEXTILE WORKERS UNION OF AMERICA, AFL, CIO, CLC (APPLICANT) V. THE LADY GALT TOWELS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWNSHIP OF BURFORD, SAVE AND EXCEPT ASSISTANT FOREMEN, ASSISTANT FORELADIES, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN AND ASSISTANT FORELADY, LABORATORY PERSONNEL, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (56 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT EMPLOYEES ENGAGED IN THE INSTALLATION OF MACHINERY ARE NOT INCLUDED IN THE BARGAINING UNIT.

11204-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA (AFL-CIO) (CLC) (APPLICANT) V. O. J. GAFFNEY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (60 EMPLOYEES IN THE UNIT).

11218-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) V. ESTATE JOSEPH LISTER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS LISTER BLOCK BUILDING AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (10 EMPLOYEES IN THE UNIT).

11221-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. LANARK MANUFACTURING COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DUNNVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PLANT GUARDS, PLANT NURSES, OFFICE AND SALES STAFF." (593 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11222-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. HERSHEY CHOCOLATE OF CANADA LTD. (RESPONDENT) V. THE CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SMITH FALLS, SAVE AND EXCEPT FOREMEN PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, LABORATORY STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (117 EMPLOYEES IN THE UNIT).

11223-65-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. UNION GAS COMPANY OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF UNION GAS COMPANY OF CANADA, LIMITED OF THE CHATHAM DIVISION, SAVE AND EXCEPT THOSE EMPLOYEES OF THE COMPANY'S HEAD OFFICE, CHATHAM, SUPERVISORY EMPLOYEES, THOSE EMPLOYEES ABOVE THE RANK OF SUPERVISION, THOSE EMPLOYEES WORKING IN A CONFIDENTIAL CAPACITY, SALES AND CASUAL EMPLOYEES. (29 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11231-65-R: LOCAL UNION # 1940, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. MECHANICAL DRYWALL (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITIES OF KITCHENER AND WATERLOO AND ALL OF THE TOWNSHIP OF WATERLOO EXCEPTING THAT PORTION OF TOWNSHIP LYING SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF WATERLOO WELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTH WESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD No. 6; THENCE ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11247-65-R: THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. LIGHTFOOT CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTH DUMFRIES, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

"THE BOARD IS SATISFIED THAT WHETHER MECHANICS AND OR WELDERS ARE OR ARE NOT INCLUDED IN THE BARGAINING UNIT, THE APPLICANT HAS A SUFFICIENT NUMBER OF THE EMPLOYEES OF THE RESPONDENT AS MEMBERS TO ENTITLE IT TO OUTRIGHT CERTIFICATION."

IT APPEARS THAT THE PARTIES ARE NOT IN AGREEMENT AS TO WHETHER THE MECHANICS AND WELDERS ARE "PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT". IT APPEARS TO THE BOARD THAT THE PARTIES THEMSELVES SHOULD BE ABLE TO RESOLVE THIS QUESTION AT THE BARGAINING TABLE. THE BOARD DOES NOT, THEREFORE, AT THIS TIME DEEM IT NECESSARY TO INQUIRE INTO THIS MATTER. HOWEVER, IF THE PARTIES ARE UNABLE TO RESOLVE THIS QUESTION, THEN IT IS POINTED OUT THAT EITHER PARTY IS ENTITLED TO REQUEST THE BOARD TO RECONSIDER ITS DECISION UNDER THE PROVISIONS OF SECTION 79(1) OF THE LABOUR RELATIONS ACT. "

11248-65-R: THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. THE TATHAM COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PRICE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

"THE BOARD IS SATISFIED THAT WHETHER MECHANICS AND OR WELDERS ARE OR ARE NOT INCLUDED IN THE BARGAINING UNIT, THE APPLICANT HAS A SUFFICIENT NUMBER OF THE EMPLOYEES OF THE RESPONDENT AS MEMBERS TO ENTITLE IT TO OUTRIGHT CERTIFICATION.

IT APPEARS THAT THE PARTIES ARE NOT IN AGREEMENT AS TO WHETHER THE MECHANICS AND WELDERS ARE "PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT". IT APPEARS TO THE BOARD THAT THE PARTIES THEMSELVES SHOULD BE ABLE TO RESOLVE THIS QUESTION AT THE BARGAINING TABLE. THE BOARD DOES NOT, THEREFORE, AT THIS TIME DEEM IT NECESSARY TO INQUIRE INTO THIS MATTER. HOWEVER, IF THE PARTIES ARE UNABLE TO RESOLVE THIS QUESTION, THEN IT IS POINTED OUT THAT EITHER PARTY IS ENTITLED TO REQUEST THE BOARD TO RECONSIDER ITS DECISION UNDER THE PROVISIONS OF SECTION 79(1) OF THE LABOUR RELATIONS ACT. "

11252-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. MODERN BUILDERS (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11253-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. DRAVO OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT MINERS AND SHAFTSMEN ARE NOT EMPLOYEES INCLUDED IN THE BARGAINING UNIT.

11259-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. TAYLOR ATLAS MAINTENANCE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE OFFICE BUILDINGS OF THE INTERNATIONAL NICKEL COMPANY OF CANADA LIMITED AT COPPER CLIFF, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, AND OFFICE STAFF." (47 EMPLOYEES IN THE UNIT).

11271-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 527 (AFL-CIO) (CLC) (APPLICANT) V. DIAMOND WATERPROOFING LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

11273-65-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 42-L (APPLICANT) V. COMMERCIAL ENGRAVERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON ENGAGED IN THE PREPARATION AND CORRECTION OF CREATIVE ART, ILLUSTRATIONS OR COPY FOR COMMERCIAL OR REPRODUCTIVE PURPOSES INCLUDING BUT NOT LIMITED TO COMMERCIAL AIRBRUSH ARTISTS, PASTE UP ARTISTS, RETOUCHERS, PHOTOSTAT OPERATORS, LETTERERS AND THEIR APPRENTICES, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11274-65-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 42-L (APPLICANT) V. THE SUPERIOR ENGRAVERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON ENGAGED IN THE PREPARATION AND CORRECTION OF CREATIVE ART, ILLUSTRATIONS OR COPY FOR COMMERCIAL OR REPRODUCTIVE PURPOSES INCLUDING BUT NOT LIMITED TO COMMERCIAL AIRBRUSH ARTISTS, PASTE UP ARTISTS, RETOUCHERS, PHOTOSTAT OPERATORS, LETTERERS AND THEIR APPRENTICES, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11275-65-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 42-L (APPLICANT) V. STANDARD ENGRAVERS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON ENGAGED IN THE PREPARATION AND CORRECTION OF CREATIVE ART, ILLUSTRATIONS OR COPY FOR COMMERCIAL OR REPRODUCTIVE PURPOSES INCLUDING BUT NOT LIMITED TO COMMERCIAL AIRBRUSH ARTISTS, PASTE UP ARTISTS, RETOUCHERS, PHOTOSTAT OPERATORS, LETTERERS AND THEIR APPRENTICES, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE DECISION OF THE BOARD DATED JANUARY 26TH, 1966, IN THE COMMERCIAL ENGRAVERS LIMITED CASE, BOARD FILE NO. 11273-65-R AND THE DECISION OF THE BOARD DATED JANUARY 26TH, 1966, IN THE SUPERIOR ENGRAVERS LIMITED CASE, BOARD FILE NO. 11274-65-R.)

11278-65-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL NO. 91, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. LIGHTFOOT CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWD HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTING

AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11279-65-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION AFL-CIO-CLC (APPLICANT) V. GALT-BRANTFORD MALLEABLE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN OFFICE AND SALES STAFF." (43 EMPLOYEES IN THE UNIT).

11284-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SUDBURY PETROFLAME LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

11285-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN ANILINE & EXTRACT CO., LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, RESEARCH LABORATORY PERSONNEL, QUALITY CONTROL LABORATORY PERSONNEL, OFFICE AND SALES STAFF." (20 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11286-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. H.G. WRIGHT MFG. CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (48 EMPLOYEES IN THE UNIT).

11288-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. KOPPERS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIPS OF NELSON AND NASSAGAWAYA IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

11293-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 498 (APPLICANT) V. DUNKER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

11312-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 1036 (APPLICANT) V. GERARD BUILDERS OF NORTH BAY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN RANGE 23, TOWNSHIP 29 AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO ALL IN THE DISTRICT OF ALGOMA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

11313-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL # 44 (APPLICANT) V. GERARD BUILDERS OF NORTH BAY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN RANGE 23, TOWNSHIP 29 AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO ALL IN THE DISTRICT OF ALGOMA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11314-65-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. PROTECTIVE PLASTICS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (64 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

11147-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. WOMEN'S COLLEGE HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN THE BOILER ROOM OF ITS HOSPITAL AT TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	1

11156-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. GENERAL MILLS CEREALS, LTD. (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT METROPOLITAN TORONTO." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3

NUMBER OF BALLOTS MARKED IN FAVOUR
OF INTERVENER

1

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

10197-65-R: CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 103 (APPLICANT) v. THE ONTARIO PAPER COMPANY LIMITED (RESPONDENT) v. INT'L BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329 (INTERVENER #1) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 232 (INTERVENER #2) v. LOCAL UNION 413 OF UNITED ASSOCIATION OF PLUMBERS & STEAMFITTERS (INTERVENER #3).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE STEAM PLANT OF THE RESPONDENT AT THOROLD, SAVE AND EXCEPT SUPERVISORY FOREMEN AND THOSE ABOVE THE RANK OF SUPERVISORY FOREMAN." (34 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

30

NUMBER OF PERSONS WHO CAST BALLOTS

30

NUMBER OF SPOILED BALLOTS

1

NUMBER OF BALLOTS MARKED IN FAVOUR
OF APPLICANT

16

NUMBER OF BALLOTS MARKED IN FAVOUR
OF INTERNATIONAL BROTHERHOOD OF
FIREMEN AND OILERS, LOCAL 329

13

(SEE INDEXED ENDORSEMENT PAGE 696).

10961-65-R: INTERNATIONAL PRINTING PRESSMEN'S AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) v. NORTHERN PRINTING COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TIMMINS, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS EMPLOYED IN THE PRESS-ROOM FOR WHOM THE APPLICANT IS THE BARGAINING AGENT." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST

4

NUMBER OF PERSONS WHO CAST BALLOTS

4

NUMBER OF BALLOTS MARKED IN FAVOUR OF
APPLICANT

4

NUMBER OF BALLOTS MARKED AGAINST
APPLICANT

0

(SEE INDEXED ENDORSEMENT PAGE 742).

11097-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. EKCO PRODUCTS COMPANY (CANADA) LIMITED (RESPONDENT) v. DISTRICT 50, UNITED MINE WORKERS OF AMERICA LOCAL 14234 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, GUARDS AND OFFICE STAFF." (136 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	118
NUMBER OF PERSONS WHO CAST BALLOTS	118
NUMBER OF SPOILED BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	80
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	35

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JANUARY

NO VOTE CONDUCTED

8973-64-R: LOCAL NO. 1, CANDIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE TORONTO ELECTRIC COMMISSIONERS (RESPONDENT) V. TORONTO HYDRO-ELECTRIC SYSTEM, COMMITTEE OF STAFF EMPLOYEE REPRESENTATIVES (INTERVENER) (656 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 687).

10452-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. PRE-CON MURRAY LIMITED (RESPONDENT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (INTERVENER). (9 EMPLOYEES).

10469-65-R: LOCAL 570 INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. THE DEHAVILLAND AIRCRAFT OF CANADA LIMITED (RESPONDENT). (72 EMPLOYEES).

"BY LETTER DATED JANUARY 18TH, 1965 THE APPLICANT HAS REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION. HAVING REGARD TO THE STAGE AT WHICH THE APPLICANT HAS MADE ITS REQUEST, THE BOARD FOLLOWING ITS USUAL PRACTICE DISMISSES THE APPLICATION."

10954-65-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. UNION GAS COMPANY OF CANADA LIMITED (RESPONDENT) V. OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (INTERVENER). (47 EMPLOYEES).

"THE INTERVENER HAS REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION. HAVING REGARD TO THE STAGE AT WHICH THE INTERVENER HAS MADE ITS REQUEST, THE BOARD FOLLOWING ITS USUAL PRACTICE DISMISSES THE APPLICATION."

THE ATTENTION OF THE PARTIES IS DRAWN TO THE MATHIAS OUELLETTE CASE, (1955) C.C.H. CANADIAN LAW REPORTS, TRANSFER BINDER '55-'59, ¶16,026, C.L.S. 76-485."

11217-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) V. W.R. GRACE & COMPANY OF CANADA LTD. (RESPONDENT). (4 EMPLOYEES).

"THE APPLICANT APPLIED ON DECEMBER 17TH, 1965, TO BE CERTIFIED AS BARGAINING AGENT FOR ALL STATIONARY ENGINEERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT BRANTFORD.

THE RESPONDENT AND THE TEXTILE WORKERS UNION OF AMERICA ARE PARTIES TO A COLLECTIVE AGREEMENT ENTERED INTO AS OF JUNE 26TH, 1965 FOR A TERM OF ONE YEAR.

THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE TEXTILE WORKERS UNION OF AMERICA COVERS ALL EMPLOYEES OF THE RESPONDENT AT THE PLANT WITH WHICH WE ARE HERE CONCERNED INCLUDING THE STATIONARY ENGINEERS. THE BOARD THEREFORE FINDS THAT, PURSUANT TO THE PROVISIONS OF SECTION 5 SUBSECTION 2 OF THE LABOUR RELATIONS ACT, THIS APPLICATION IS UNTIMELY.

THIS APPLICATION IS ACCORDINGLY DISMISSED."

11219-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. HOLMES FOUNDRY LIMITED (RESPONDENT). (15 EMPLOYEES).

"FOR THE REASONS GIVEN ORALLY AT THE HEARING AND HAVING REGARD TO THE FACT THAT THE PARTIES AGREED THAT THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED ARE COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE APPLICANT THROUGH ITS LOCAL NO. 456, THIS APPLICATION IS TERMINATED."

11220-65-R: THE SUDBURY AND DISTRICT GENERAL WORKERS' UNION LOCAL 902 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (APPLICANT) V. CENTRAL SUPERMARKETS LIMITED (ELM STREET I.G.A.) (RESPONDENT). (76 EMPLOYEES).

"THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE APPLICATION IS THEREFORE DISMISSED."

11234-65-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. WEYERHAEUSER CANADA LIMITED (RESPONDENT). (13 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 747).

11235-65-R: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA, OTTAWA LOCAL NO. 5 (APPLICANT) V. SYNDICAT D'OEUVRES SOCIALES, LIMITEE (RESPONDENT) V. SYNDICAT DE L'INDUSTRIE DE L'IMPRIMERIE, REGION OTTAWA-HULL (INTERVENER). (10 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 748).

11246-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION No. 837 (APPLICANT) v. TIDEY CONSTRUCTION Co. LTD. (RESPONDENT) v. OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOC. LOCAL 298 (INTERVENER). (11 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 749).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

10905-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. NATIONAL STEEL CAR CORPORATION LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SECURITY GUARDS AND FIRST AID STAFF." (1568 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	1349
NUMBER OF PERSONS WHO CAST BALLOTS	849
NUMBER OF BALLOTS EXCLUDING SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES APPEAR ON VOTERS' LIST	844
NUMBER OF SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES APPEAR ON VOTERS' LIST	5
NUMBER OF SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES DO NOT APPEAR ON VOTERS' LIST	9

(BALLOTS NOT COUNTED)

(SEE INDEXED ENDORSEMENT PAGE 738).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

10381-65-R: SUDBURY MINE, MILL AND SMELTER WORKERS' UNION, LOCAL 598 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA) (APPLICANT) v. THE INTERNATIONAL NICKEL COMPANY OF CANADA, LIMITED (RESPONDENT) v. UNITED STEELWORKERS OF AMERICA (INTERVENER). (15007 EMPLOYEES).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT BOUND BY THE SAID COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT, DATED JULY 10TH, 1963."

NUMBER OF PERSONS ON VOTERS' LIST AT START OF VOTE	14,959
NUMBER OF PERSONS WHO CAST BALLOTS	14,376
NUMBER OF SPOILED BALLOTS	50

BALLOTS SEGREGATED AND NOT COUNTED	33
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6,099
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	8,194

(SEE INDEXED ENDORSEMENT PAGE 698).

10474-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. UNION CARBIDE CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS CONSUMER PRODUCTS DIVISION AT 805 DAVENPORT ROAD, TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND SECURITY GUARDS." (294 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	207
NUMBER OF PERSONS WHO CAST BALLOTS	206
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	71
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	134

10877-65-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' UNION LOCAL 604, PETERBOROUGH, ONTARIO (APPLICANT) V. MCGILLIS HOTEL COMPANY LIMITED (RESPONDENT).

UNIT: "ALL BARTENDERS, TAPMEN AND WAITERS EMPLOYED IN THE BEVERAGE ROOMS OF THE RESPONDENT'S HOTEL IN PETERBOROUGH, SAVE AND EXCEPT OWNERS, MANAGER, ASSISTANT MANAGER, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10

11090-65-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 (APPLICANT) V. LORIMER - MOORE MOTORS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND CAR SALESMEN." (4 EMPLOYEES IN THE UNIT).

THE APPLICANT SOUGHT A BARGAINING UNIT OF ALL MECHANICS AND HELPERS OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN THOSE ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND CAR SALESMEN. REPRESENTATIONS OF THE APPLICANT AND PREVIOUS CERTIFICATIONS OF THE APPLICANT TO WHICH THE BOARD WAS DIRECTED DO NOT SUPPORT THE APPLICANT'S REQUEST FOR A CRAFT BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3	

11129-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 944 (APPLICANT) V. WHYTE PACKING DIVISION OF THE FIRST CO-OPERATIVE PACKERS OF ONTARIO LIMITED (RESPONDENT) V. WHYTE EMPLOYEE'S ASSOCIATION (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOM AT STRATFORD." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED IN FAVOUR OF WHYTE EMPLOYEE'S ASSOCIATION	3	

11143-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC. (APPLICANT) V. BROOKSIDE-PRICE'S DAIRY LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT OFFICE MANAGER AND THOSE ABOVE THE RANK OF OFFICE MANAGER." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JANUARY

11233-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CALAND ORE COMPANY LIMITED (RESPONDENT). (25 EMPLOYEES).

11251-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNI 3227, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) V. WHITNEY CONSTRUCTION LIMITED (RESPONDENT). (13 EMPLOYEES).

11281-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 1089 (APPLICANT) V. CHEMICAL CONST. (CANADA) LTD. (RESPONDENT). (11 EMPLOYEES).

11319-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. MCKAY COCKER CONSTRUCTION LIMITED (RESPONDENT) (2 EMPLOYEES).

APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS

DISPOSED OF DURING JANUARY

11085-65-R: STEPHEN RUF AND HEINZ BERGATT (APPLICANTS) V. SHOPMEN'S LOCAL UNION No. 734 INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS. AFL-CIO, CLC (RESPONDENT) V. NIAGARA STRUCTURAL STEEL CO. LTD. (INTERVENER). (141 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	141
NUMBER OF PERSONS WHO CAST BALLOTS	141
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	12
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	128

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING JANUARY

11179-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. GALION MANUFACTURING OF CANADA LTD. (RESPONDENT) V. GALION EMPLOYEES' ASSOCIATION (PREDECESSOR TRADE UNION).

(SEE INDEXED ENDORSEMENT PAGE 750).

11185-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL-CIO-CLC. (APPLICANT) V. ELLENZWEIG BAKERY LIMITED (RESPONDENT).

DECISION OF THE BOARD:

THE BOARD FINDS THAT THE APPLICANT, BY REASON OF A TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS, AFL-CIO-CLC WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN ELLENZWEIG BAKERY LIMITED AND UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS, AFL-CIO-CLC DATED FEBRUARY 25TH, 1964 AND EFFECTIVE UNTIL FEBRUARY 5TH, 1966 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

THE BOARD ACCORDINGLY DECLARES, PUSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS, AFL-CIO-CLC WHICH WAS A PARTY TO THE COLLECTIVE AGREEMENT, REFERRED TO IN PARAGRAPH 1, WITH THE RESPONDENT.

11260-65-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL., CLC., CIO., OFL., LOCAL 636 (APPLICANT) V. PUBLIC UTILITIES COMMISSION OF THE TOWN OF BURLINGTON (RESPONDENT).

DECISION OF THE BOARD:

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF LOCAL 2019, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN THE PUBLIC UTILITIES COMMISSION OF THE TOWN OF BURLINGTON AND LOCAL 2019, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS EFFECTIVE FROM APRIL 1ST, 1964 UNTIL MARCH 31ST, 1966 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

11261-65-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL., CLC., CIO., OFL., LOCAL 636 (APPLICANT) V. PUBLIC UTILITIES COMMISSION OF THE TOWN OF BURLINGTON (RESPONDENT).

DECISION OF THE BOARD:

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF LOCAL 2019, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN THE PUBLIC UTILITIES COMMISSION OF THE TOWN OF BURLINGTON AND LOCAL 2019, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS EFFECTIVE FROM JUNE 13TH, 1964 UNTIL MARCH 31ST, 1966 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

11263-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. M. LOEB LIMITED, SUDBURY, ONTARIO (RESPONDENT).

DECISION OF THE BOARD:

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF THE SUDBURY GENERAL WORKERS UNION LOCAL #101, CANADIAN LABOUR CONGRESS, WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN M. LOEB LIMITED, SUDBURY, ONTARIO AND THE SUDBURY GENERAL WORKERS UNION LOCAL #101, CANADIAN LABOUR CONGRESS EFFECTIVE FROM AUGUST 1ST, 1964 TO JULY 31ST, 1966 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

11264-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC.
(APPLICANT) V. BERTRAND BROS., SUDBURY, ONTARIO (RESPONDENT).

DECISION OF THE BOARD:

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF THE SUDBURY GENERAL WORKERS UNION, LOCAL #101, CANADIAN LABOUR CONGRESS, WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN BERTRAND BROS., SUDBURY, ONTARIO AND THE SUDBURY GENERAL WORKERS UNION, LOCAL #101, CANADIAN LABOUR CONGRESS EFFECTIVE FROM OCTOBER 1ST, 1964 TO SEPTEMBER 30TH, 1965 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

11265-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT)
V. NORTHERN FOODMARTS LIMITED, SUDBURY (RESPONDENT).

DECISION OF THE BOARD:

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF THE SUDBURY GENERAL WORKERS' UNION LOCAL NO. 101, CANADIAN LABOUR CONGRESS WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN NORTHERN FOODMARTS LIMITED, SUDBURY AND THE SUDBURY GENERAL WORKERS' UNION LOCAL NO. 101, CANADIAN LABOUR CONGRESS EFFECTIVE FROM SEPTEMBER 1ST, 1964 TO AUGUST 31ST, 1966 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

11266-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC. (APPLICANT)
V. PROVINCIAL FRUIT COMPANY (SUDBURY) LIMITED, SUDBURY, ONTARIO (RESPONDENT).

DECISION OF THE BOARD:

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF SUDBURY GENERAL WORKERS' UNION LOCAL 101, CANADIAN LABOUR CONGRESS, WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN PROVINCIAL FRUIT COMPANY (SUDBURY) LIMITED, SUDBURY, ONTARIO, AND SUDBURY GENERAL WORKERS' UNION LOCAL 101, CANADIAN LABOUR CONGRESS EFFECTIVE FROM JANUARY 1ST, 1965 TO DECEMBER 31ST, 1967 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

11267-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL-CIO-CLC. (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED (RESPONDENT).

DECISION OF THE BOARD:

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF SUDBURY & GENERAL WORKERS' UNION, LOCAL 101, CANADIAN LABOUR CONGRESS, WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN NATIONAL GROCERS COMPANY LIMITED AND SUDBURY & GENERAL WORKERS' UNION, LOCAL 101, CANADIAN LABOUR CONGRESS WHICH IS IN EFFECT UNTIL JULY 30TH, 1967 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING JANUARY

10608-65-U: THE ONTARIO PAPER COMPANY LIMITED (APPLICANT) V. T. WAINMAN, ET AL (RESPONDENTS). (WITHDRAWN).

10609-65-U: THE ONTARIO PAPER COMPANY LIMITED (APPLICANT) V. LOCAL 101, UNITED PAPERMAKERS AND PAPER WORKERS (RESPONDENT). (WITHDRAWN).

11317-65-U: SCM (CANADA) LIMITED (APPLICANT) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, AND ITS LOCAL 514 (RESPONDENT). (WITHDRAWN).

APPLICATION FOR CONSENT TO PROSECUTE DISPOSED OF DURING JANUARY

10613-65-U: THE ONTARIO PAPER COMPANY LIMITED (APPLICANT) V. T. WAINMAN, J. BURTON, G. NELSON, E. CAHILL, R. DEEKER AND J. THEISEN (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING JANUARY

10861-65-U: LOCAL 636 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (COMPLAINANT) V. TR SERVICES LIMITED (RESPONDENT).

11042-65-U: L. U. 636 - INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (COMPLAINANT) V. TR SERVICES LIMITED (RESPONDENT).

11175-65-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) AND LOCAL 641 (COMPLAINANT) V. ELECTRONIC MATERIALS OF CANADA LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 752).

11178-65-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. WILSON-HINSCHBERGER LIMITED (RESPONDENT).

11250-65-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. HOLMES FOUNDRY LTD. (RESPONDENT).

11262-65-U: L.U. 636, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L. C.I.O. C.L.C. O.F.L. (COMPLAINANT) V. TR SERVICES LIMITED (RESPONDENT).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING JANUARY

11104-65-M: THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC, AND ITS LOCAL 440 (APPLICANT) V. THE BORDEN COMPANY LIMITED (RESPONDENT) V. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES UNION, LOCAL 647, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS LONDON DIVISION AT LONDON, SAVE AND EXCEPT MANAGERS, ROUTE FOREMEN, PERSONS ABOVE THE RANKS OF MANAGER AND ROUTE FOREMAN AND OFFICE STAFF."

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	84
NUMBER OF PERSONS WHO CAST BALLOTS	71
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	7
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	64

(SEE INDEXED ENDORSEMENT PAGE 753).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING JANUARY

11113-65-M: INTERNATIONAL HOD CARRIERS' BUILDING & COMMON LABOURERS UNION OF AMERICA, LOCAL UNION 697 (TRADE UNION) V. TAYLOR WOODROW INSTALLATIONS LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 772).

11254-65-M: INTERNATIONAL UNION OF OPERATING ENGINEERS, CONTRACTING BY ITS LOCAL 796 (TRADE UNION) V. KING-YONGE-YARMON LEASEHOLD PARTNERSHIP (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 774).

REFERENCE TO BOARD PURSUANT TO SECTION 79A OF THE ACT DISPOSED OF DURING JANUARY

11076-65-M: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (TRADE UNION) V. UNITED LATHING AND PLASTERING CONTRACTORS ASSOCIATION (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 767).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

10906-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ESSEX WIRE CORPORATION LIMITED (RESPONDENT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL UNION 141 (INTERVENER).

(SEE INDEXED ENDORSEMENT PAGE 775).

11098-65-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) V. IROQUOIS FALLS AND CALVERT DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 779).

11066-65-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) V. K. MELHORN (RESPONDENT). (REQUEST DENIED).

11121-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. PERCHUK LUMBER (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 780).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

11118-65-U: FRANK KUNTZ (COMPLAINANT) V. PITT STREET HOTEL LTD. (KING GEORGE HOTEL) (RESPONDENT). (REQUEST DENIED).

INDEXED ENDORSEMENTS - CERTIFICATION

8973-64-R: LOCAL NO. 1, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE TORONTO ELECTRIC COMMISSIONERS (RESPONDENT), TORONTO HYDRO-ELECTRIC SYSTEM, COMMITTEE OF STAFF EMPLOYEE REPRESENTATIVES (INTERVENER), GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: D. LEWIS, Q.C., W. BAKER AND C. MACKAY FOR THE APPLICANT, J. T. WEIR, Q.C., J. A. BRIDGES, I. ELLIS, S. P. WEBB AND M. A. McQUAIN FOR THE RESPONDENT, W. A. LITTLE AND D. L. NEWMAN FOR THE INTERVENER, A. MACDONALD, R. A. MIGHTON, D. E. TOOGOOD, E. D. STRAIT, A. B. CORDES, T. E. ROWLAND AND V. G. SMART FOR A GROUP OF EMPLOYEES.

DECISION OF: J. H. BROWN, DEPUTY VICE-CHAIRMAN AND BOARD MEMBER H. F. IRWIN:

(JANUARY 21, 1966.)

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

THE APPLICANT IS APPLYING FOR THE FOLLOWING UNIT OF EMPLOYEES OF THE RESPONDENT WHICH THE APPLICANT CLAIMS IS APPROPRIATE FOR COLLECTIVE BARGAINING:

ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT THOSE COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT, FOREMEN AND SUPERVISORS, AND THOSE ABOVE THE RANK OF FOREMAN OR SUPERVISOR, STATIONARY ENGINEERS AND THEIR

HELPERS, OFFICE AND CLERICAL STAFF, SALES STAFF, DESIGNERS, DRAFTSMEN, SURVEYORS, TECHNICAL FIELDMEN, ENGINEERING ASSISTANTS, TECHNICAL ASSISTANTS, LIGHTING SERVICE REPRESENTATIVES, POWER REPRESENTATIVES, TECHNICAL REPRESENTATIVES, ELECTRIC SERVICE REPRESENTATIVES, AND ADVERTISING AND DISPLAY PERSONNEL.

3. THE RESPONDENT CLAIMS THAT THE ONLY UNIT OF ITS EMPLOYEES WHICH IS APPROPRIATE FOR COLLECTIVE BARGAINING IS AS FOLLOWS:

ALL STAFF EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE EXECUTIVE GENERAL OFFICE STAFF, THE PERSONNEL OFFICE STAFF, THE CLAIMS OFFICE STAFF, MANAGERS, ASSISTANT MANAGERS, SUPERVISORS AND ASSISTANT EXECUTIVES, FOREMEN AND OTHER EMPLOYEES PERFORMING FOREMAN'S FUNCTIONS, PROFESSIONAL ENGINEERS, CONFIDENTIAL SECRETARIES TO THE MANAGERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD.

4. THE APPLICANT IS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT CONSISTING OF ALL HOURLY RATED EMPLOYEES. THAT IS TO SAY, NO SALARIED OCCUPATIONAL CLASSIFICATIONS ARE INCLUDED IN THE BARGAINING UNIT. THE APPLICANT SUBMITS THAT THE BARGAINING UNIT WHICH IT IS SEEKING IN THE INSTANT APPLICATION MAY BE TERMED AS A TAG-END UNIT, CONSISTING OF OCCUPATIONAL CLASSIFICATIONS WHOSE WORK WOULD HAVE BROUGHT THEM WITHIN THE BARGAINING UNIT ALREADY REPRESENTED BY THE APPLICANT, WERE THERE NOT THE DISTINCTION BETWEEN HOURLY RATED AND SALARIED EMPLOYEES. MORE SPECIFICALLY, THE APPLICANT SUBMITS THAT THE APPROPRIATE BARGAINING UNIT WITH RESPECT TO THE INSTANT APPLICATION IS ONE WHICH INCLUDES ALL MANUAL EMPLOYEES NOT ALREADY REPRESENTED BY THE APPLICANT AND EXCLUDES ALL OFFICE CLERICAL, PLANNING, DESIGNING, DRAFTING, SALES AND PROMOTION EMPLOYEES WHO WOULD NORMALLY FALL WITHIN AN OFFICE, CLERICAL AND TECHNICAL BARGAINING UNIT.

5. THE RESPONDENT SUBMITS THAT THE UNIT OF EMPLOYEES FOR WHOM THE APPLICANT ALREADY IS THE BARGAINING AGENT ARE ENGAGED IN THE "CONSTRUCTION" OPERATIONS OF THE RESPONDENT AND HAVE A COMMUNITY OF INTERESTS SEPARATE AND APART FROM THE OTHER EMPLOYEES OF THE RESPONDENT. THE RESPONDENT FURTHER SUBMITS THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS NOT A FUNCTIONAL TAG END BECAUSE OF THE DIVERSIFIED DUTIES AND RESPONSIBILITIES OF THE EMPLOYEES CONCERNED. THE RESPONDENT FINALLY SUBMITS THAT THE UNIT OF EMPLOYEES PROPOSED BY THE APPLICANT IS NOT APPROPRIATE TO THE RESPONDENT'S ORGANIZATION AS IT CUTS ACROSS DEPARTMENTAL LINES OF WORK, PROMOTIONAL OPPORTUNITIES AND IN-TRAINING PROGRAMMES.

6. THE BOARD DOES NOT PROPOSE TO DEAL WITH EACH AND EVERY CLASSIFICATION INDIVIDUALLY. A REVIEW, HOWEVER, OF THE OCCUPATIONS AND CORRESPONDING JOB FUNCTIONS OF THOSE EMPLOYEES INCLUDED IN THE BARGAINING UNIT ALREADY REPRESENTED BY THE APPLICANT SHOW THAT A MAJORITY OF THESE EMPLOYEES ARE ENGAGED IN MANUAL CONSTRUCTION, INSTALLATION, MAINTENANCE AND REPAIR WORK RELATING TO THE BASIC EQUIPMENT OF THE RESPONDENT'S SYSTEM, I.E., CONDUITS AND CABLES, POLES AND LINES, MANHOLES, VAULTS

AND TRANSFORMERS. MOST OF THE BALANCE OF THE EMPLOYEES IN THIS BARGAINING UNIT DO JOBS WHICH ARE AN ADJUNCT TO THE ABOVE WORK, SUCH AS THE SUPPLY AND DELIVERY OF MATERIALS AND EQUIPMENT. THE REMAINING EMPLOYEES IN THE BARGAINING UNIT ARE ENGAGED IN WORK WHICH RELATES TO THE EXTERNAL CONSTRUCTION, MAINTENANCE AND REPAIR OF THE PHYSICAL PROPERTIES OWNED BY THE RESPONDENT.

7. THE JOB FUNCTIONS OF SOME CLASSIFICATIONS WHICH THE APPLICANT WANTS TO INCLUDE IN ITS PROPOSED BARGAINING UNIT ARE SIMILAR TO THOSE PERFORMED BY PERSONS IN THE EXISTING BARGAINING UNIT. THE MOST PROMINENT OF THESE ARE MAINTENANCE AND STOCKKEEPING EMPLOYEES. THE DISTINGUISHING FEATURE BETWEEN THE MAINTENANCE EMPLOYEES NOW REPRESENTED BY THE APPLICANT AND THOSE WHICH IT IS SEEKING IS THAT THE FORMER DO OUTSIDE MAINTENANCE ON THE RESPONDENT'S PREMISES AND AT THE SITES OF INSTALLATION AND REPAIR WORK ON THE SYSTEM ITSELF, WHEREAS THE LATTER DO CLEANING AND MAINTENANCE WORK INSIDE THE BUILDING PREMISES OF THE RESPONDENT. THE BOARD IN THE VAST MAJORITY OF CASES HAS REFUSED TO GRANT SEPARATE BARGAINING RIGHTS FOR MAINTENANCE PERSONNEL AND HAS INCLUDED THEM IN UNITS WITH OTHER PLANT EMPLOYEES. THE FEW EXCEPTIONS TO THIS PRACTICE ARE WHERE AN ESTABLISHED HISTORY OF SEPARATE BARGAINING HAS BEEN DEMONSTRATED. IN THE CASE OF STOCKKEEPERS WE ARE NOT AWARE OF ANY CASE WHERE THE BOARD HAS FOUND THESE TYPES OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING EITHER BY THEMSELVES OR TOGETHER WITH MAINTENANCE EMPLOYEES. INVARIABLY THEY ARE INCLUDED IN "ALL EMPLOYEE" UNITS.

8. THE APPLICANT IS SEEKING TO INCLUDE IN ITS PROPOSED UNIT EMPLOYEES WITH A VARIETY OF JOB TITLES AND DUTIES, WHO CAN GENERALLY BE DESCRIBED AS FIELDMEN. THE BASIC FUNCTIONS OF THESE EMPLOYEES CAN LARGELY BE DESCRIBED AS MAKING TESTS ON EQUIPMENT AND INVESTIGATING COMPLAINTS OF CUSTOMERS. SOME OF THEM EVEN ADVISE CUSTOMERS AND DO LIASON WORK WITH CONTRACTORS. THE AMOUNT OF ACTUAL PHYSICAL WORK THEY DO IS INSIGNIFICANT AND ACCORDINGLY THEY CANNOT BE CLASSIFIED AS "MANUAL" WORKERS IN ANY REAL SENSE OF THAT WORD. THE SAME IS TRUE OF THE METER READERS WHOM THE APPLICANT IS ALSO SEEKING TO INCLUDE IN ITS PROPOSED UNIT.

9. THERE ARE ALSO SERVICE REPAIRMEN AND ELECTRICIANS WHO ARE CLAIMED BY THE APPLICANT. THESE EMPLOYEES INSTALL AND REPAIR ELECTRICAL AND PLUMBING EQUIPMENT ON THE PREMISES OF CUSTOMERS OF THE RESPONDENT. WHILE THEY PERFORM MANUAL FUNCTIONS THEY WORK UNDER THE SUPERVISION AND DIRECTION OF FIELDMEN, TECHNICAL FIELDMEN OR TECHNICAL ASSISTANTS IN THEIR RESPECTIVE DEPARTMENTS. IN OUR VIEW, THEIR COMMUNITY OF INTERESTS LIES MORE WITH THE EMPLOYEES IN THEIR OWN DEPARTMENTS THAN WITH THE MANUAL EMPLOYEES NOW REPRESENTED BY THE APPLICANT.

10. THE TECHNICAL FIELDMEN AND TECHNICAL ASSISTANTS REFERRED TO IN THE PREVIOUS PARAGRAPH ARE HIGHLY TRAINED EMPLOYEES. THEIR JOB FUNCTIONS ARE CONCERNED WITH INVESTIGATION AND PLANNING. AS A GENERAL RULE, BUT SUBJECT TO EXCEPTIONS, THE TECHNICAL FIELDMEN MAKE INVESTIGATIONS AND DO PLANNING IN THE FIELD, WHEREAS THE LATTER DO SIMILAR WORK IN THE OFFICE. THERE IS, HOWEVER, NO CLEAR CUT LINE BETWEEN THE TWO CLASSIFICATIONS AS EMPLOYEES IN BOTH CLASSIFICATIONS USUALLY SPEND SOME TIME IN THE FIELD AND SOME TIME IN THE OFFICE. ALTHOUGH THESE EMPLOYEES CLEARLY ARE NOT MANUAL EMPLOYEES, THE APPLICANT CLAIMS THAT THOSE WHO DO THEIR WORK PRIMARILY IN THE FIELD ARE APPROPRIATE FOR INCLUSION IN ITS PROPOSED BARGAINING UNIT, WHILE THOSE WHO DO THEIR WORK PRIMARILY IN THE OFFICE ARE NOT. BECAUSE OF THE DIFFICULTY IN DISTINGUISHING BETWEEN THOSE WHO SHOULD OR SHOULD NOT BE INCLUDED ON THE BASIS OF JOB TITLES, HOWEVER, THE APPLICANT HAS TAKEN THE POSITION THAT IT

IS PREPARED TO EXCLUDE ALL OF THE EMPLOYEES IN BOTH CLASSIFICATIONS.

11. THERE ARE, IN ADDITION, EMPLOYEES SUCH AS POWER, SALES AND SERVICE REPRESENTATIVES WHO DEAL DIRECTLY WITH THE CUSTOMERS AND POTENTIAL CUSTOMERS OF THE RESPONDENT. THESE EMPLOYEES MAKE ESTIMATES OF THE REQUIREMENTS OF CUSTOMERS FOR THEIR PARTICULAR PREMISES AND DIVIDE THEIR TIME BETWEEN THE FIELD AND THE OFFICE. THE APPLICANT SEEKS TO EXCLUDE THESE CLASSIFICATIONS FROM ITS PROPOSED BARGAINING UNIT ON THE BASIS THAT THEY ARE ENGAGED IN A SALES FUNCTION. WE FIND, HOWEVER, THAT THESE EMPLOYEES HAVE A DEFINITE COMMUNITY OF INTERESTS WITH THE TECHNICAL ASSISTANTS, TECHNICAL FIELDMEN AND FIELDMEN, SOME OF WHOM THE APPLICANT CLAIMS ARE APPROPRIATE FOR INCLUSION IN ITS PROPOSED BARGAINING UNIT. SIMILARLY, WE NOTE THAT WHILE THE APPLICANT SEEKS THE INCLUSION OF FIELD REPAIRMEN, IT WISHES TO EXCLUDE THE DESPATCH CLERK WHO RELAYS THE CONSUMER CALLS TO THE FIELD ON THE BASIS THAT THE LATTER PERFORMS A CLERICAL FUNCTION, DESPITE THE ABVIOUS COMMUNITY OF INTERESTS OF THESE EMPLOYEES. WE WOULD MENTION THAT IN ONE DEPARTMENT WHERE THE SERVICEMEN AND DESPATCH CLERKS INTERCHANGE THEIR JOBS ON A ROTATING BASIS THE APPLICANT WANTS ALL OF THESE EMPLOYEES.

12. IN PARAGRAPH 7 THE BOARD REFERRED TO A COMMUNITY OF INTERESTS OF MAINTENANCE AND STOCKKEEPING PERSONNEL WITH THOSE EMPLOYEES IN THE EXISTING BARGAINING UNIT ON THE BASIS THAT THEY ALL PERFORM MANUAL FUNCTIONS. IN ADDITION TO THE FACT THAT THE BOARD GENERALLY HAS NOT FOUND THESE CLASSIFICATIONS AS GROUPS APPROPRIATE FOR COLLECTIVE BARGAINING, THERE ARE OTHER FACTORS IN THE INSTANT CASE WHICH MITIGATE AGAINST THE BOARD FINDING THEM TO BE AN APPROPRIATE "TAG-END" UNIT. WE WOULD POINT OUT THAT THE STOCKKEEPERS AND EMPLOYEES IN SIMILAR CATEGORIES ARE SCATTERED THROUGHOUT THE RESPONDENT'S ORGANIZATION IN VARIOUS DEPARTMENTS. AND WHILE A MAJORITY OF THE MAINTENANCE PERSONNEL ARE IN A SINGLE DEPARTMENT, SOME OF THEM ARE ATTACHED TO SEPARATE DEPARTMENTS. EVEN ASSUMING, HOWEVER, THAT THE MAINTENANCE OR STOCKKEEPING EMPLOYEES ARE A COHESIVE GROUP, WE ARE APPREHENSIVE THAT A DETERMINATION THAT THEY FORM A SEPARATE BARGAINING UNIT WOULD LEAD TO AN UNDESIRABLE FRAGMENTATION OF BARGAINING RIGHTS THROUGHOUT THE RESPONDENT'S WHOLE ORGANIZATION.

13. THE ONLY OTHER EMPLOYEES SOUGHT BY THE APPLICANT WHO CAN TRULY BE CLASSIFIED AS MANUAL WORKERS ARE A NUMBER OF INSTALLATION AND REPAIR EMPLOYEES. AS HAS BEEN MENTIONED ALREADY, THEIR REAL COMMUNITY OF INTERESTS IS NOT WITH THE OUTSIDE MANUAL EMPLOYEES WHO THE APPLICANT REPRESENTS, BUT WITH THE EMPLOYEES IN THEIR OWN DEPARTMENT. FURTHER, AS IN THE CASE OF THE STOCKKEEPERS, THEY ARE EMPLOYED IN DEPARTMENTS THROUGH OUT THE RESPONDENT'S ORGANIZATION ACCORDING TO THE SKILLS REQUIRED BY VARIOUS DEPARTMENTS. THE REMAINING CLASSIFICATION WHICH THE APPLICANT IS SEEKING THAT MIGHT BE CONSIDERED AS "MANUAL" ARE PRINTERS, WHO SPEND ALL THEIR TIME IN THE OFFICE. THESE EMPLOYEES CERTAINLY DO NOT DO MANUAL WORK OF THE SAME NATURE AS THE EMPLOYEES REPRESENTED BY THE APPLICANT AND WE CAN SEE NO COMMUNITY OF INTERESTS BETWEEN THEM.

14. THE EMPLOYEES IN ALL OTHER CLASSIFICATIONS SOUGHT BY THE APPLICANT DO NOT HAVE "MANUAL" FUNCTIONS AS WE UNDERSTAND THE

WORD. ACCORDINGLY, WITH RESPECT TO THESE EMPLOYEES, THE WHOLE BASIS OF THE APPLICANT'S ARGUMENT FOR THEIR INCLUSION IN ITS PROPOSED BARGAINING UNIT CANNOT BE SUPPORTED. WE WOULD MENTION THAT BECAUSE MOST OF THESE EMPLOYEES WORK IN THE FIELD IT DOES NOT, IN OUR VIEW, GIVE THEM A COMMUNITY OF INTEREST WITH THE EMPLOYEES IN THE EXISTING BARGAINING UNIT. MOREOVER, THE BOARD IS UNABLE TO DRAW ANY LOGICAL OR RECOGNIZABLE LINE BETWEEN EMPLOYEES IN THE HIGHLY SKILLED OCCUPATIONAL CLASSIFICATIONS WHICH THE APPLICANT SEEKS TO INCLUDE, AND THOSE IN THESE CLASSIFICATIONS WHICH IT SEEKS TO EXCLUDE FROM ITS PROPOSED BARGAINING UNIT. FINALLY, AND OF GREAT WEIGHT IN THE BOARD'S DELIBERATION, IS THE FACT THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT CUTS RIGHT ACROSS DEPARTMENTAL LINES IN A MANNER WHICH, IN OUR OPINION, IS LIABLE TO RESULT IN A SERIOUS DISRUPTION OF THE RESPONDENT'S OPERATION INCLUDING ITS ENTIRE PATTERN OF ORGANIZATION.

15. WE WOULD POINT OUT THAT THE COMPOSITION OF THE EXISTING BARGAINING UNIT ONLY INCLUDES WHOLE DEPARTMENTS, ALTHOUGH OF COURSE THERE ARE OFFICE AND CLERICAL PERSONNEL WHO SERVICE THE NEEDS OF THESE DEPARTMENTS. WE WOULD MENTION ALSO THAT IN ESTABLISHING ITS EXISTING BARGAINING RIGHTS, THE APPLICANT ACCEPTED THE ORGANIZATIONAL STRUCTURE OF THE RESPONDENT. THAT IS TO SAY, IT AGREED WITH THE RESPONDENT THAT ITS BARGAINING RIGHTS WOULD ONLY INCLUDE THOSE EMPLOYEES WHO ARE PAID ON AN HOURLY BASIS. HAVING MADE AND LIVED WITH THAT AGREEMENT FOR MANY YEARS, THE POSITION TAKEN BY THE APPLICANT THAT IT CAN NOW ORGANIZE ON A BASIS WHICH COMPLETELY DISREGARDS THE RESPONDENT'S PATTERN OF ORGANIZATION HAS LESS LEIGHT THAN IT OTHERWISE MIGHT HAVE HAD.

16. HAVING CONSIDERED THE WRITTEN AND ORAL REPRESENTATIONS OF THE PARTIES AND HAVING CAREFULLY STUDIED THE REPORT OF THE EXAMINER IN THIS MATTER TOGETHER WITH THE ATTACHED EXHIBIT AND OTHER MATERIAL FILED WITH THE BOARD, WE FIND THAT THE UNIT OF EMPLOYEES OF THE RESPONDENT PROPOSED BY THE APPLICANT IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING. IN VIEW OF THE LENGTH OF TIME AND THE EXTENSIVE NATURE OF THE INQUIRIES WHICH WERE MADE WITH RESPECT TO A BARGAINING UNIT IN THIS CASE, IT WOULD SEEM DESIRABLE THAT THE BOARD DETERMINE WHAT IS AN APPROPRIATE BARGAINING UNIT. THE PARTIES TO THIS APPLICATION, HOWEVER, ALMOST EXCLUSIVELY DIRECTED THEIR ENQUIRY BEFORE THE EXAMINER AND THEIR REPRESENTATIONS TO THE BOARD ITSELF TO THE QUESTION OF THE APPROPRIATENESS OR THE INAPPROPRIATENESS OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT. ACCORDINGLY, ON THE EVIDENCE BEFORE US WE ARE NOT IN A POSITION TO MAKE A FINDING AS TO WHETHER THE BARGAINING UNIT PROPOSED BY THE RESPONDENT OR WHAT OTHER BARGAINING UNIT WOULD BE APPROPRIATE FOR COLLECTIVE BARGAINING.

17. THE LIST FILED WITH THE BOARD BY THE RESPONDENT CONTAINS THE NAMES OF 656 EMPLOYEES. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP FOR 154 EMPLOYEES. WHILE THE BOARD IS NOT PREPARED TO MAKE ANY FINDING AS TO AN APPROPRIATE BARGAINING UNIT, IT IS SATISFIED THAT ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN

FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT PROPOSED BY THE RESPONDENT OR IN ANY LESSER UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

18. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

DECISION OF BOARD MEMBER E. BOYER: (JANUARY 21, 1966.)

I DISSENT.

WHILE I HAVE SOME DIFFICULTY IN DRAWING A LINE ON THE BASIS OF JOB FUNCTIONS BETWEEN THE MORE HIGHLY TRAINED TECHNICAL OCCUPATIONAL CLASSIFICATIONS WHICH THE APPLICANT IS SEEKING TO INCLUDE IN ITS PROPOSED BARGAINING UNIT, AND THE OFFICE, CLERICAL AND SALES STAFF WHICH THE APPLICANT WISHES TO EXCLUDE FROM ITS UNIT, I AM SATISFIED THAT AT THE VERY MINIMUM THE APPLICANT IS ENTITLED TO A SEPARATE OR TAG END UNIT TO THE EXISTING BARGAINING UNIT COMPOSED OF ALL MAINTENANCE PERSONNEL. ACCORDINGLY, I WOULD HAVE FOUND SUCH A UNIT TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. IN MY VIEW, BY DENYING THE APPLICANT THE BARGAINING UNIT WHICH IT IS SEEKING, THE MAJORITY, IN EFFECT, ARE ALSO SAYING THAT A UNIT OF OFFICE EMPLOYEES IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING.

10197-65-R: CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 103 (APPLICANT) v. THE ONTARIO PAPER COMPANY LIMITED (RESPONDENT), INT'L BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329 (INTERVENER #1), INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 232 (INTERVENER #2), AND LOCAL UNION 413 OF UNITED ASSOCIATION OF PLUMBERS & STEAMFITTERS (INTERVENER #3).

BEFORE: J. FINKELMAN, Q.C., CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: I. SCOTT AND M. A. HEELEY FOR THE APPLICANT, S. K. LEARIE, Q.C., C. D. BANNWELL, J. A. CARPENTER AND W. J. HAMMOND FOR THE RESPONDENT, A. THURSTON, L. INGLE AND W. R. TOWNSEND FOR THE INTERVENER, INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329, R. HILL AND J. WEDGE FOR THE INTERVENER, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 232, AND H. J. BURKE FOR THE INTERVENER, LOCAL UNION 413 OF UNITED ASSOCIATION OF PLUMBERS & STEAMFITTERS.

DECISION OF THE BOARD: (NOVEMBER 9, 1965.)

THE APPLICANT HAS APPLIED FOR CERTIFICATION AS BARGAINING AGENT FOR A BARGAINING UNIT OF EMPLOYEES OF THE RESPONDENT COMPANY COMPRISING "ALL STATIONARY ENGINEERS AND HELPERS EMPLOYED BY THE RESPONDENT AT THOROLD, ONTARIO, SAVE AND EXCEPT THE CHIEF ENGINEER AND THOSE ABOVE THE RANK OF CHIEF ENGINEER". THE RESPONDENT AND THE INTERVENER, INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329, HEREINAFTER REFERRED TO AS THE "FIREMEN AND OILERS UNION", OPPOSE THE APPLICATION. THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 232, AND THE UNITED ASSOCIATION OF PLUMBERS AND STEAMFITTERS, LOCAL 423, ALSO INTERVENED, BUT IT BECAME APPARENT IN THE EARLY STAGES OF THE HEARINGS HELD IN CONNECTION WITH THIS APPLICATION THAT THE APPLICANT WAS NOT SEEKING TO REPRESENT ANY EMPLOYEES REPRESENTED BY THESE TWO LAST-NAMED UNIONS; IT WAS SEEKING TO

REPLACE THE FIREMEN AND OILERS UNION AS BARGAINING AGENT FOR THE UNIT OF EMPLOYEES FOR WHOM IT CLAIMED, THAT UNION IS PRESENTLY THE BARGAINING AGENT.

ON AN APPLICATION MADE BY THE PARENT BODY OF THE APPLICANT HEREIN, NAMELY, THE CANADIAN UNION OF OPERATING ENGINEERS, IN 1961, THE BOARD FOUND THAT A GROUP OF TRADE UNIONS, WHICH DID NOT CONSTITUTE A COUNCIL OF TRADE UNIONS AND WHICH INCLUDED ALL THREE UNIONS THAT INTERVENED IN THESE PROCEEDINGS AS WELL AS A NUMBER OF OTHERS, HAD JOINTLY ENTERED INTO A COLLECTIVE AGREEMENT WITH THE RESPONDENT COMPANY WHEREIN, AS THE BOARD FOUND, THEY "JOINTLY REPRESENTED THE EMPLOYEES IN ONE COMPOSITE BARGAINING UNIT DEFINED THEREIN AS 'THE EMPLOYEES OF [THE COMPANY'S] PLANT AT THOROLD'", WITH EXCEPTIONS THAT ARE NOT MATERIAL TO THIS CASE. THE BOARD FURTHER FOUND IN THAT CASE, THAT, BECAUSE OF THE TERMS OF THE COLLECTIVE AGREEMENT JUST REFERRED TO, THE EMPLOYEES ON WHOSE BEHALF THE APPLICANT IN THAT CASE WAS SEEKING CERTIFICATION FELL WITHIN THE CONCLUDING PORTION OF SUBSECTION 2 OF SECTION 6 OF THE LABOUR RELATIONS ACT AND THAT ACCORDINGLY, IN DETERMINING THE APPROPRIATENESS OF THE BARGAINING UNIT, THE BOARD WAS REQUIRED TO APPLY NOT THE MANDATORY PROVISIONS SET OUT IN THE FIRST PART OF SUBSECTION 2 OF SECTION 6 OF THE ACT BUT THE DISCRETIONARY POWERS CONFERRED BY THE CONCLUDING WORDS OF THAT SUBSECTION. IN THE RESULT, THE BOARD FOUND THAT THE UNIT PROPOSED BY THE APPLICANT IN THAT CASE WAS NOT APPROPRIATE AND THE APPLICATION WAS DISMISSED.

COUNSEL FOR THE APPLICANT NOW CONTENDS THAT THERE HAS BEEN A SUBSTANTIAL ALTERATION IN THE RELATIONSHIP BETWEEN THE FIREMEN AND OILERS UNION AND THE OTHER UNIONS AND THE RESPONDENT COMPANY WITHIN THE PAST YEAR AND THAT THE CONCLUSIONS REACHED BY THE BOARD IN THE EARLIER CASE ARE NOT APPLICABLE TO THE CONDITIONS THAT NOW PREVAIL. AN ANALYSIS OF THE EVIDENCE RELATING TO THE RELATIONSHIP BETWEEN THE COMPANY AND THE VARIOUS UNIONS CONCERNED IS THEREFORE IN ORDER.

ON MAY 1ST, 1963, AN AGREEMENT WAS ENTERED INTO BETWEEN THE COMPANY, ON THE ONE HAND, AND THE FOLLOWING UNIONS ON THE OTHER HAND, NAMELY: UNITED PAPERMAKERS AND PAPERWORKERS, LOCAL 101; THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, LOCAL 84; THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 914; THE INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL 268; THE INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329; THE UNITED ASSOCIATION OF PLUMBERS AND STEAMFITTERS, LOCAL 413; THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 232; THE UNITED BROTHERHOOD OF CARPENTERS, LOCAL 1677; AND THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1477. IN THAT AGREEMENT, THE COMPANY RECOGNIZED THE "SIGNATORY UNIONS AS THE SOLE AND EXCLUSIVE BARGAINING REPRESENTATIVES FOR THE PURPOSES OF COLLECTIVE BARGAINING FOR THE EMPLOYEES OF ITS PLANT AT THOROLD, ONTARIO". THE RECOGNITION CLAUSE OF THE AGREEMENT CONTAINED AN EXCLUSIONARY PROVISION WHICH IS NOT HERE MATERIAL. FROM THE EVIDENCE PRESENTED TO US, IT WOULD APPEAR THAT THAT AGREEMENT WAS NEGOTIATED IN THE SAME WAY, AND IT WAS INTENDED BY THE PARTIES TO OPERATE IN THE SAME FASHION, AS THE AGREEMENT DEALT WITH IN THE PREVIOUS APPLICATION.

IN OCTOBER 1964, THE FIREMEN AND OILERS UNION RESOLVED TO WITHDRAW FROM THE "JOINT ENTERPRISE" AND, PRIOR TO THE COMMENCEMENT OF THE NEW YEAR, THAT UNION SO NOTIFIED THE RESPONDENT COMPANY AS WELL AS THE OTHER MEMBERS OF THE JOINT COMMITTEE THAT REPRESENTED THE VARIOUS UNIONS WHICH WERE PARTY TO THE AGREEMENT. WE HAVE NO EVIDENCE BEFORE US THAT, IN THE NEGOTIATIONS

FOR THE RENEWAL OF THE AGREEMENT THAT HAD BEEN ENTERED INTO ON MAY 1ST, 1963, AND WHICH REMAINED IN EFFECT UNTIL APRIL 30, 1965, THE SEVERAL UNIONS WENT THEIR OWN WAY, SOME CONTINUING TO BARGAIN AS A GROUP AND SOME BARGAINING ON AN INDIVIDUAL BASIS APART FROM THE OTHER UNIONS. THERE IS NOTHING TO SUGGEST THAT THE COMPANY TOOK ANY OBJECTION AT ANY TIME TO BARGAINING BEING CONDUCTED BY THE VARIOUS UNIONS IN THE MANNER INDICATED. THIS WAS THE SITUATION THAT OBTAINED ON APRIL 1ST, 1965, THE DATE WHEN THE INSTANT APPLICATION WAS MADE.

SINCE APRIL 1, THE FOLLOWING AGREEMENTS HAVE BEEN ENTERED INTO BY THE COMPANY: AN AGREEMENT DATED AUGUST 20, 1965 WITH "THE FOLLOWING JOINT UNIONS: THE INTERNATIONAL ASSOCIATION OF MACHINISTS - LOCAL 268, THE UNITED ASSOCIATION OF PLUMBERS AND STEAMFITTERS - LOCAL 413, THE INTERNATIONAL UNION OF OPERATING ENGINEERS - LOCAL 232, THE UNITED BROTHERHOOD OF CARPENTERS - LOCAL 1677, THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION - LOCAL 1477"; AN AGREEMENT DATED AUGUST 28, 1965 WITH INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS LOCAL 84; AN AGREEMENT DATED OCTOBER 20, 1965 WITH UNITED PAPERMAKERS AND PAPERWORKERS LOCAL 101; AN AGREEMENT DATED OCTOBER 20, 1965, WITH INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 914. AT THE HEARING IN THIS MATTER ON SEPTEMBER 29, 1965, WE WERE INFORMED THAT NEGOTIATIONS HAD BEEN CONCLUDED BETWEEN THE COMPANY AND THE TWO LAST-MENTIONED UNIONS BUT THAT THE AGREEMENTS HAD NOT BEEN EXECUTED AT THAT TIME. COUNSEL AGREED THAT THE SEVERAL AGREEMENTS WOULD BE FILED WITH THE BOARD AFTER THE HEARING AND COPIES OF ALL THESE AGREEMENTS HAVE NOW BEEN SUBMITTED TO US. NO NEW AGREEMENT AND NO RENEWAL OF THE PREVIOUS AGREEMENT HAS BEEN ENTERED INTO BETWEEN THE COMPANY AND THE FIREMEN AND OILERS UNION; INDEED, THAT UNION HAS NOT YET SUBMITTED ITS "DEMANDS" TO THE COMPANY. EACH OF THE FOUR AGREEMENTS ENTERED INTO BETWEEN THE COMPANY AND THE VARIOUS UNIONS REFERRED TO ABOVE COMMENCE WITH THE FOLLOWING STATEMENT:

THE ABOVE-MENTIONED PARTIES HAVING MET IN
NEGOTIATIONS AGREE TO RENEW THE COLLECTIVE
LABOUR AGREEMENT FOR A PERIOD OF THREE YEARS,
FROM MAY 1ST, 1965 TO APRIL 30, 1968, WITH
THE FOLLOWING CHANGES IN RATES AND WORKING
CONDITIONS.

THE REMAINDER OF EACH OF THE NEW AGREEMENTS SETS OUT THE RATES AND WORKING CONDITIONS APPLICABLE TO THE VARIOUS CLASSIFICATIONS OF EMPLOYEES REPRESENTED BY THE SEVERAL UNIONS SIGNATORY TO THOSE AGREEMENTS. IN NONE OF THEM IS THERE ANY SPECIFIC REFERENCE TO A BARGAINING UNIT.

IT IS OBVIOUS THAT NONE OF THE AGREEMENTS REFERRED TO ABOVE WAS EXECUTED AT A TIME WHEN IT WOULD OPERATE AS A BAR TO THE INSTANT APPLICATION. THE QUESTION BEFORE US, THEN, IS SOLELY AS TO WHETHER IN THE CIRCUMSTANCES OF THIS CASE THE APPROPRIATE UNIT OF EMPLOYEES IS AN "ALL-EMPLOYEE" UNIT, SUCH AS WAS DEFINED IN THE AGREEMENT OF MAY 1, 1963, OR WHETHER SOME SEGMENT OF THAT UNITY MAY BE APPROPRIATE IN THIS CASE.

THE EVIDENCE BEFORE US LEADS US TO THE IRRESISTIBLE CONCLUSION THAT THE "JOINT ENTERPRISE" CAME TO AN END ON THE DATE WHEN THE 1963 AGREEMENT CEASED TO OPERATE AND THAT EACH OF THE 8 UNIONS THAT SUBSEQUENTLY ENTERED

INTO COLLECTIVE AGREEMENTS WITH THE COMPANY, I.E., ALL OF THE MEMBERS OF THE "JOINT ENTERPRISE" WITH THE EXCEPTION OF THE FIREMEN AND OILERS UNION, NEGOTIATED WITH THE COMPANY FOR AGREEMENTS TO COVER EMPLOYEES IN A SEGMENT OR SEGMENTS OF THE BARGAINING UNIT TO WHICH THE 1963 AGREEMENT HAD APPLIED, ALTHOUGH THESE SEGMENTS WERE NOT SPECIFICALLY IDENTIFIED IN THE NEGOTIATIONS NOR WERE THEY DEFINED IN THE AGREEMENTS THAT WERE ULTIMATELY EXECUTED. AS WE HAVE SEEN, FIVE OF THE UNIONS NEGOTIATED JOINTLY AND THREE EACH NEGOTIATED SEPARATELY. NO ARRANGEMENTS WERE MADE IN ANY OF THESE AGREEMENTS TO COVER THE CLASSIFICATIONS OF EMPLOYEES REPRESENTED BY THE FIREMEN AND OILERS UNION. THERE REMAIN, THEREFORE, EMPLOYEES IN A SEGMENT OF THE ORIGINAL UNIT WITH RESPECT TO WHOM NO AGREEMENT HAS BEEN MADE AND THE APPLICANT, IN OUR OPINION, IS CLEARLY ENTITLED TO SEEK CERTIFICATION FOR A BARGAINING UNIT CONSISTING OF SUCH EMPLOYEES.

COUNSEL FOR THE RESPONDENT COMPANY AND FOR THE FIREMEN AND OILERS UNION SOUGHT TO ELICIT FROM THE WITNESSES EVIDENCE DESIGNED TO SHOW THAT THE EMPLOYEES WHOM THE APPLICANT WAS SEEKING TO REPRESENT HAD BEEN ADEQUATELY REPRESENTED BY THE UNIONS WHICH FORMED THE "JOINT ENTERPRISE". THEY ALSO CONTENDED THAT THE FACTS OF THIS CASE WERE INDISTINGUISHABLE FROM THE FACTS IN THE LILY CUP LINE OF CASES. THE LILY CUP CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1961, P. 370, AND THE MANY OTHER DECISIONS OF THE BOARD IN THE SAME VEIN DEAL WITH A SITUATION WHERE AN APPLICANT SEEKS TO SEVER A CRAFT UNIT FROM A LARGER ESTABLISHED UNIT; THEY DO NOT HAVE ANY RELATION TO A SITUATION WHERE ONE TRADE UNION FOR THE WHOLE UNIT THAT THE INCUMBENT REPRESENTS. THE APPROACH TO THE PROBLEM SUGGESTED BY COUNSEL FOR THE COMPANY AND FOR THE FIREMEN AND OILERS UNION ASSUMES THAT THE "JOINT ENTERPRISE" STILL CONTINUES IN EFFECT AND THAT THE 9 UNIONS THAT WERE BOUND BY THE 1963 AGREEMENT REMAINED, THROUGHOUT THE ENTIRE PERIOD MATERIAL TO THIS APPLICATION, THE JOINT BARGAINING AGENTS FOR ALL THE EMPLOYEES IN THE WHOLE OF THE BARGAINING UNIT DEFINED IN THE 1963 AGREEMENT. AS WE HAVE ALREADY STATED, THE EVIDENCE DOES NOT SUPPORT SUCH A CONCLUSION.

WE ARE FACED WITH A PROBLEM IN SPELLING OUT THE DESCRIPTION OF THE APPROPRIATE BARGAINING UNIT IN THIS CASE BECAUSE OF THE CIRCUMSTANCES SET OUT ABOVE AND THE WAY IN WHICH THE UNIT IN THE 1963 AGREEMENT WAS WORDED. IT IS CLEAR, HOWEVER, THAT THE APPROPRIATE UNIT IN THE INSTANT CASE COMPRISES THOSE EMPLOYEES OF THE RESPONDENT WHO ARE NOW REPRESENTED FOR COLLECTIVE BARGAINING BY THE FIREMEN AND OILERS UNION. COUNSEL FOR THE COMPANY INFORMED US AT THE FIRST HEARING HELD IN CONNECTION WITH THIS APPLICATION THAT THE LIST OF EMPLOYEES FILED BY THE COMPANY PURSUANT TO THE DIRECTIONS OF THE REGISTRAR INCLUDE ALL THE EMPLOYEES WHO WERE REPRESENTED BY THE FIREMEN AND OILERS UNION AND, IN ADDITION, ONE OTHER EMPLOYEE WHO HELD STATIONARY ENGINEER'S PAPERS BUT WAS EMPLOYED AT THE MATERIAL TIME AS A GRINDERMAN. HE STATED THAT THE NAME OF THIS PERSON WAS INCLUDED ON THE LIST BECAUSE THE INCLUSION APPEARED TO BE CALLED FOR BY THE DESCRIPTION OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT IN ITS APPLICATION. THERE IS ALSO TO BE FOUND ON THIS LIST THE NAME OF ONE J. DE DIVITIS, CLASSIFIED AS A YARD LABOURER. THE LIST CONTAINS THE NOTATION "ON APRIL 1, 1965 THIS EMPLOYEE, A YARD LABOURER, REPRESENTED BY THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, WAS TEMPORARILY ASSIGNED AS A HELPER TO THE STATIONARY ENGINEERS". THE MEMBERSHIP POSITION OF THE APPLICANT IS SUCH, HOWEVER, THAT IT IS NOT NECESSARY FOR US TO MAKE ANY RULING AT THIS STAGE AS TO WHETHER THESE PERSONS SHOULD OR SHOULD NOT BE INCLUDED IN THE BARGAINING UNIT. THE BOARD IS SATISFIED, ON THE

BASIS OF ALL THE EVIDENCE BEFORE IT, THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE "APPROPRIATE BARGAINING UNIT" AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. THE APPLICANT IS THEREFORE ENTITLED TO TEST THE WISHES OF THE EMPLOYEES CONCERNED AS TO WHETHER THEY DESIRE THE APPLICANT OR THE FIREMEN AND OILERS UNION TO REPRESENT THEM IN COLLECTIVE BARGAINING.

A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTE CONSTITUENCY: ALL EMPLOYEES OF THE RESPONDENT AT THOROLD WHO ARE NOW REPRESENTED FOR COLLECTIVE BARGAINING BY THE INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329. THE MATTER IS REFERRED TO THE REGISTRAR.

FOLLOWING THE TAKING OF THE VOTE, THE BOARD WILL ENTERTAIN REPRESENTATIONS FROM THE PARTIES, IF IT SHOULD BECOME NECESSARY TO DO SO, AS TO THE PROPER DESCRIPTION OF THE APPROPRIATE BARGAINING UNIT.

10197-65-R: CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 103 (APPLICANT) v. THE ONTARIO PAPER COMPANY LIMITED (RESPONDENT), INT'L BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329 (INTERVENER #1), INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 232 (INTERVENER #2), AND LOCAL UNION 413 OF UNITED ASSOCIATION OF PLUMBERS & STEAMFITTERS (INTERVENER #3).

BEFORE: J. FINKELMAN, Q.C., CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: I. SCOTT AND M. A. HEELEY FOR THE APPLICANT, S. K. LEARIE, Q.C., C. D. BANWELL, J. A. CARPENTER AND W. J. HAMMOND FOR THE RESPONDENT, A. THURSTON, L. INGLE AND W. R. TOWNSEND FOR THE INTERVENER, INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329, R. HILL AND J. WEDGE FOR THE INTERVENER, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 232, AND H. R. BURKE FOR THE INTERVENER, LOCAL UNION 413 OF UNITED ASSOCIATION OF PLUMBERS & STEAMFITTERS.

DECISION OF THE BOARD: (JANUARY 17, 1966.)

OVER A PERIOD OF SEVERAL MONTHS, THREE HEARINGS WERE HELD IN THIS CASE AND A GREAT DEAL OF INFORMATION WAS SUBMITTED BY THE RESPONDENT, AT THE REQUEST OF THE BOARD, CONCERNING THE COMPOSITION OF AN APPROPRIATE BARGAINING UNIT AND THE STAFFING OF THE STEAM PLANT, WHICH IS THAT PART OF THE RESPONDENT'S OPERATIONS CONCERNED IN THESE PROCEEDINGS. WE SHOULD ADD THAT THE RESPONDENT COMPANY COOPERATED FULLY WITH THE BOARD AND WITH THE OTHER PARTIES IN SUPPLYING ALL NECESSARY INFORMATION. FOLLOWING THE HEARINGS REFERRED TO ABOVE, THE BOARD GAVE CAREFUL CONSIDERATION TO THE EVIDENCE PRESENTED AND TO THE REPRESENTATIONS OF THE PARTIES AND, FOR THE REASONS SET

OUT AT LENGTH IN ITS DECISION OF NOVEMBER 9, 1965, THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN A VOTING CONSTITUENCY THAT IT DESCRIBED IN THE FOLLOWING TERMS: "ALL EMPLOYEES OF THE RESPONDENT AT THOROLD WHO ARE NOW REPRESENTED FOR COLLECTIVE BARGAINING BY THE INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329". IN DESCRIBING THE VOTING CONSTITUENCY IN THESE TERMS, THE BOARD HAD REGARD INTER ALIA FOR THE PAST BARGAINING PRACTICES AT THE THOROLD PLANT OF THE RESPONDENT AND THE PRINCIPLES LAID DOWN IN THE BARNETT-McQUEEN CASE, (1954) C.C.H. CANADIAN LABOUR LAW REPORTER TRANSFER BINDER '55-'59, ¶16,139, C.L.S. '66-646. IN ITS DECISION OF NOVEMBER 9, 1965 IN THIS MATTER, THE BOARD REFERRED TO A DECISION OF THIS BOARD IN AN EARLIER CASE INVOLVING SUBSTANTIALLY THE SAME PARTIES IN WHICH THE BOARD HAD DISMISSED AN APPLICATION FOR CERTIFICATION BROUGHT BY THE PARENT BODY OF THE PRESENT APPLICANT SEEKING A BARGAINING UNIT THAT WAS FOR ALL PRACTICAL PURPOSES THE SAME AS THAT SOUGHT BY THE APPLICANT IN THE INSTANT CASE. THE BOARD THEN WENT ON TO POINT OUT THAT THE RESPONDENT COMPANY AND THE TRADE UNIONS WITH WHOM IT HAD HAD ONE "JOINT" COLLECTIVE AGREEMENT AT AN EARLIER STAGE HAD NOT PRESERVED THE RELATIONSHIP THAT OBTAINED EARLIER BUT HAD IN FACT MATERIALLY ALTERED THEIR RELATIONSHIP. IT WAS BECAUSE OF THIS ALTERATION IN THE RELATIONSHIP BETWEEN THE PARTIES TO THE EARLIER AGREEMENT THAT THE BOARD HELD IN ITS DECISION OF NOVEMBER 9, 1965 THAT, UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT, A REPRESENTATION VOTE WAS IN ORDER. IF, AS COUNSEL FOR THE RESPONDENT SUGGESTS, HIS CLIENT WILL BE FACED WITH SERIOUS PROBLEMS IN LABOUR RELATIONS IN THE FUTURE, THESE PROBLEMS HAVE BEEN CREATED BY THE COURSE OF CONDUCT PURSUED DURING THE LAST FEW MONTHS BY THE RESPONDENT AND THE UNIONS WHO HAD BEEN PARTIES TO THE "JOINT" COLLECTIVE AGREEMENT REFERRED TO ABOVE.

IT SHOULD BE NOTED THAT, FOLLOWING THE RELEASE OF THE BOARD'S DECISION OF NOVEMBER 9, 1965, NO REQUEST WAS MADE BY ANY OF THE PARTIES THAT THE BOARD RECONSIDER THAT DECISION. THE PARTIES MET AND UNANIMOUSLY SETTLED THE LIST OF ELIGIBLE VOTERS EXCEPT WITH RESPECT TO ONE PERSON WHOSE ELIGIBILITY TO VOTE WAS RULED ON BY THE REGISTRAR. AS WE SHALL SEE, NO EXCEPTION WAS TAKEN TO THIS RULING WHICH IS ENTIRELY IN ACCORD WITH THE BOARD'S POLICIES IN THAT BEHALF. THE LIST OF ELIGIBLE VOTERS THAT WAS USED BY THE RETURNING OFFICER IN CONNECTION WITH THIS VOTE BEARS THE HEADING: "ALL EMPLOYEES OF THE RESPONDENT AT THOROLD WHO ARE NOW REPRESENTED FOR COLLECTIVE BARGAINING BY THE INT. BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329, AS AT NOV. 9, 1965", AND IS SIGNED BY SHARMAN LEARIE FOR THE RESPONDENT, W.R. TOWNSEND FOR THE INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, M.A. HEELEY FOR THE CANADIAN UNION OF OPERATING ENGINEERS, H.J. BURKE FOR THE UNITED ASSOCIATION OF PLUMBERS & STEAMFITTERS AND JOHN WEDGE FOR THE INTERNATIONAL UNION OF OPERATING ENGINEERS, BEING THE REPRESENTATIVES OF ALL THE PARTIES WHO APPEARED AT THE HEARINGS OF THIS APPLICATION AND WHO PARTICIPATED IN MAKING THE VOTE ARRANGEMENTS. THE VOTE WAS TAKEN ON DECEMBER 9, 1965. FORM 49, THE NOTICE OF REPORT OF RETURNING OFFICER, WAS SERVED ON ALL PARTIES AND WAS POSTED AS REQUIRED UNDER THE BOARD'S RULES OF PROCEDURE. AGAIN, IN ACCORDANCE WITH THE RULES, THE REGISTRAR SET DECEMBER 17 AS THE LAST DAY FOR THE FILING OF OBJECTIONS. NO NOTICE OF OBJECTIONS WAS RECEIVED FROM ANY OF THE PARTIES PURSUANT TO THIS NOTICE. ON DECEMBER 20, 1965, AFTER THE TIME FOR FILING OBJECTIONS HAD GONE BY, THE APPLICATION WAS

LISTED FOR CONTINUATION OF HEARING ON JANUARY 13, 1966, THE PURPOSE OF THE HEARING, AS STATED IN THE NOTICE OF HEARING, BEING TO ENABLE THE PARTIES TO MAKE REPRESENTATIONS TO THE BOARD WITH RESPECT TO THE DESCRIPTION OF THE APPROPRIATE BARGAINING UNIT. THIS WAS IN ACCORDANCE WITH THE FOLLOWING STATEMENT IN THE BOARD DECISION OF NOVEMBER 9, 1965:

FOLLOWING THE TAKING OF THE VOTE, THE BOARD WILL ENTERTAIN REPRESENTATIONS FROM THE PARTIES, IF IT SHOULD BECOME NECESSARY TO DO SO, AS TO THE PROPER DESCRIPTION OF THE APPROPRIATE BARGAINING UNIT.

AT THE HEARING ON JANUARY 13, 1966, THE REPRESENTATIVES OF THE APPLICANT MADE CERTAIN REPRESENTATIONS AS TO HOW THE BARGAINING UNIT SHOULD BE DESCRIBED, AS DID THE REPRESENTATIVE OF THE INTERVENER LOCAL UNION 413 OF THE UNITED ASSOCIATION OF PLUMBERS & STEAMFITTERS. HOWEVER, COUNSEL FOR THE RESPONDENT AGAIN POINTED OUT, AS HE HAD AT EARLIER HEARINGS, THE DIFFICULTIES THAT THE RESPONDENT WAS, IN HIS OPINION, LIKELY TO ENCOUNTER IN ITS DEALINGS WITH ITS EMPLOYEES AND THE UNIONS REPRESENTING THEM IN BARGAINING SHOULD THE APPLICANT BE CERTIFIED. HE DID NOT MAKE ANY REPRESENTATIONS AS TO HOW THE APPROPRIATE BARGAINING UNIT SHOULD BE DESCRIBED. HE SUBMITTED THAT, IN VIEW OF THE BACKGROUND OF THIS CASE AND THE FACT THAT THE APPLICANT HAD "WON" THE VOTE BY ONLY ONE BALLOT, THE BOARD OUGHT TO "LOOK AT A SLIGHTLY DIFFERENT FORM OF VOTING CONSTITUENCY THAN THAT REPRESENTED BY THE FIREMEN AND OILERS". IN EFFECT HE SEEMED TO BE ASKING THAT THE BOARD DISREGARD THE RESULT OF THE VOTE TAKEN ON DECEMBER 9 AND DIRECT A NEW VOTE IN SOME OTHER CONSTITUENCY THAN THAT SET OUT IN THE BOARD'S PREVIOUS DECISION. THE REPRESENTATIVE OF THE INTERVENER INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329, CONCURRED IN THE VIEW EXPRESSED BY COUNSEL FOR THE RESPONDENT.

WE ARE UNABLE TO FIND ANY JUSTIFICATION IN THE CIRCUMSTANCES OF THIS CASE FOR IGNORING THE RESULT OF THE VOTE TAKEN ON DECEMBER 9, AND, IN VIEW OF THE COURSE OF THE PROCEEDINGS AT THE LAST HEARING IN THIS MATTER, WE HAVE NO ALTERNATIVE BUT TO PROCEED TO DEFINE THE APPROPRIATE BARGAINING UNIT ON THE BASIS OF THE EVIDENCE PRESENTED TO US AND THE REPRESENTATIONS MADE ON BEHALF OF THE APPLICANT ALONE WITHOUT THE ASSISTANCE WE MIGHT HAVE DERIVED FROM ANY REPRESENTATIONS IN THAT REGARD THAT THE RESPONDENT MIGHT HAVE GIVEN US.

10381-65-R: SUDBURY MINE, MILL AND SMELTER WORKERS' UNION, LOCAL 598 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA) (APPLICANT) v. THE INTERNATIONAL NICKEL COMPANY OF CANADA, LIMITED (RESPONDENT) AND UNITED STEELWORKERS OF AMERICA (INTERVENER).

APPEARANCES AT THE HEARING: JOHN P. NELLIGAN, N. THIBAUT, W. KENNEDY, R. MCARTHUR, T. P. TAYLOR AND C. FOURNIER FOR THE APPLICANT, T. D. DELAMERE, Q.C., B. M. OSLER, Q.C. AND N. H. WADGE FOR THE RESPONDENT, AND JOHN H. OSLER, Q.C., D. M. STOREY, G. GILCHRIST, D. McNABB AND D. BROWN FOR THE INTERVENER.

REASONS FOR DECISION OF THE BOARD: (OCTOBER 28, 1965.)

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

INTRODUCTION AND BACKGROUND INFORMATION

ON MAY 11TH, 1965, THE APPLICANT, SUDBURY MINE, MILL AND SMELTER WORKERS' UNION, LOCAL 598 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA), HEREINAFTER REFERRED TO AS "MINE MILL", APPLIED TO THE BOARD UNDER THE PROVISIONS OF SECTION 5(3) OF THE LABOUR RELATIONS ACT, TO BE CERTIFIED FOR A UNIT OF EMPLOYEES PRESENTLY BOUND BY A COLLECTIVE AGREEMENT, DATED JULY 10TH, 1963, BETWEEN THE RESPONDENT, THE INTERNATIONAL NICKEL COMPANY OF CANADA, LIMITED, HEREINAFTER REFERRED TO AS "INCO" AND THE INTERVENER, THE UNITED STEELWORKERS OF AMERICA, HEREINAFTER REFERRED TO AS "STEEL".

IN SUPPORT OF ITS APPLICATION, MINE MILL FILED 7,713 APPLICATIONS FOR MEMBERSHIP, CONFIRMED BY RECEIPTS, AND 137 CERTIFICATES OF MEMBERSHIP. MINE MILL DID NOT REQUEST A PRE-HEARING REPRESENTATION VOTE. THE LIST OF EMPLOYEES IN THE BARGAINING UNIT TOGETHER WITH SPECIMEN SIGNATURES WAS FILED WITH THE BOARD BY INCO ON JUNE 7TH, 1965. THAT LIST CONTAINED THE NAMES OF 15,007 EMPLOYEES, 12,281 OF WHOM WERE AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION. THE REMAINING 2,726 PERSONS WERE SHOWN AS NOT HAVING WORKED ON MAY 11TH, 1965 FOR A VARIETY OF REASONS. NEITHER MINE MILL NOR STEEL HAS QUESTIONED IN ANY WAY THE NUMBER OF PERSONS ON THE LIST FILED BY INCO.

IN ITS INTERVENTION, WHICH WAS FILED A DAY LATER THAT THE LAST DAY FOR FILING PRESCRIBED BY THE BOARD'S RULES OF PROCEDURE, STEEL STATED IT DESIRED TO MAKE THE FOLLOWING SUBMISSIONS:

THE INTERVENER WILL SUBMIT AT ANY HEARING THAT MAY BE CALLED, NAMES OF (A) CERTAIN PERSONS CLAIMED AS MEMBERS BY THE APPLICANT WHO HAVE NEITHER SIGNED AN APPLICATION CARD NOR PAID ANY MONEY TO THE APPLICANT WITHIN THE 12 MONTH PERIOD PRECEDING THE DATE OF THE APPLICATION; (B) CERTAIN PERSONS CLAIMED AS MEMBERS BY THE APPLICANT WHO HAVE PAID NO MONEY TO THE APPLICANT WITHIN THE 12 MONTH PERIOD PRECEDING THE DATE OF THE APPLICATION; AND (C) CERTAIN PERSONS CLAIMED AS MEMBERS OF LONG STANDING WHO HAVE PAID NO MONEY TO THE APPLICANT ON ACCOUNT OF FEES OR DUES WITHIN THE 12 MONTH PERIOD PRECEDING THE DATE OF THE APPLICATION.

THE FIRST HEARING IN THIS MATTER WAS HELD IN TORONTO ON JUNE 15TH, 1965. AT THIS HEARING THE PARTIES AGREED ON THE DESCRIPTION OF THE BARGAINING UNIT. BECAUSE THE LIST OF EMPLOYEES HAD NOT BEEN FILED UNTIL A WEEK BEFORE THE HEARING (AND IN POINTING THIS OUT WE INTEND NO CRITICISM OF THE RESPONDENT) THE BOARD WAS IN A POSITION TO GIVE ONLY A PRELIMINARY AND INCOMPLETE STATEMENT OF THE MEMBERSHIP POSITION OF THE APPLICANT, MINE MILL, IN RELATION TO THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. IN FACT, AT THIS STAGE THE SIGNATURE CHECK HAD NOT BEEN COMMENCED. IT WAS

STATED BY THE BOARD AT THIS TIME THAT TO REACH THE STAGE IT HAD BY JUNE 15TH, "ADDITIONAL STAFF HAD BEEN ASSIGNED TO WORK ON THE CASE AND THIS WAS IN KEEPING WITH THE BOARD'S INTENTION OF USING ALL AVAILABLE MEANS WITHIN ITS POWER TO EXPEDITE THE PROCESSING OF THE APPLICATION AND ITS FINAL DISPOSITION".

IT WAS ALSO POINTED OUT THAT WITH REFERENCE TO THE 2,726 PERSONS NOT AT WORK ON MAY 11TH, THE BOARD WOULD HAVE TO RULE AS TO THEIR INCLUSION OR EXCLUSION FOR PURPOSES OF THE COUNT, IN ACCORDANCE WITH ITS REGULAR PRACTICE, NAMELY, IF AN EMPLOYEE WAS NOT AT WORK WITHIN THE MONTH PRECEDING THE DATE OF THE MAKING OF THE APPLICATION, OR IF HE HAS WORKED AT SOME TIME DURING THE PRECEDING MONTH, BUT THERE IS NO DEFINITE DATE FOR HIS RETURN DURING THE MONTH FOLLOWING THE DATE OF THE MAKING OF THE APPLICATION, SUCH EMPLOYEE IS NOT INCLUDED FOR PURPOSES OF THE COUNT. AT NO TIME DURING ANY OF THE HEARINGS OF THIS CASE DID ANY OF THE PARTIES TAKE ISSUE WITH OR MAKE REPRESENTATIONS TO THE BOARD ON THIS ANNOUNCED PRACTICE. THE RESULT OF THE BOARD'S RULINGS ON EACH OF THE 2,226 PERSONS WAS SUBSEQUENTLY ANNOUNCED TO THE PARTIES AND IS SET OUT LATER IN THIS DECISION.

AT THE HEARING THE APPLICANT WAS INFORMED THAT IT WAS ENTITLED TO SEE THE CARDS FILED BY IT FOR PERSONS WHOSE NAMES WERE NOT ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. IN DUE COURSE THE APPLICANT SUBMITTED A LIST OF 70 NAMES OF PERSONS IT ALLEGED WERE IN FACT AT WORK ON MAY 11TH, 1965. THE LIST CONTAINED FURTHER INFORMATION WITH REFERENCE TO CHANGED CLOCK NUMBERS, DIFFERENT SPELLINGS AND INITIALS, AS A RESULT OF WHICH THE BOARD WAS ABLE TO MATCH A FURTHER 49 NAMES WITH THOSE ON THE RESPONDENT'S LIST. SEVENTEEN NAMES WERE NOT ON THAT LIST AND THE BOARD WAS UNABLE TO REACH A CONCLUSION AT THAT STAGE WITH RESPECT TO THE REMAINING 4 NAMES. THIS INFORMATION WAS RELEASED TO THE PARTIES AT A HEARING IN SUDBURY AND IS REFLECTED IN THE SECOND COUNT RELEASED BY THE BOARD ON SEPTEMBER 8TH, 1965. NO REPRESENTATIONS WERE MADE BY ANY OF THE PARTIES FOLLOWING THE RELEASE OF THE BOARD'S FINDINGS ON THE LIST OF 70 NAMES FILED BY MINE MILL.

AT THE HEARING OF JUNE 15TH, THE INTERVENER, STEEL, FILED WITH THE BOARD, IN ACCORDANCE WITH ITS ANNOUNCED INTENTION IN ITS INTERVENTION, THE NAMES OF 116 PERSONS WHO, IT BELIEVED, WERE CLAIMED AS MEMBERS BY MINE MILL AND WHOSE CARDS, IT ALLEGED, WERE DEFICIENT IN ONE OR MORE OF THE THREE HEADS SET OUT IN ITS INTERVENTION. THE LISTS WERE ACCOMPANIED BY VARIOUS DOCUMENTS IN SUPPORT OF THE CLAIM AND DESCRIBED IN MORE DETAIL IN THE BOARD'S LETTER TO THE PARTIES DATED JUNE 22ND, 1965. THE APPLICANT TOOK THE POSITION THAT SINCE THE INTERVENTION WAS LATE, STEEL SHOULD HAVE APPLIED TO THE BOARD TO EXTEND THE TIME FOR FILING AND, FURTHER, THAT NO FURTHER FILINGS SHOULD BE PERMITTED; IN OTHER WORDS, THE MATERIALS FILED AT THE HEARING ON JUNE 15TH SHOULD CONSTITUTE THE "SUM TOTAL OF THE INTERVENTION". THE BOARD, AFTER CONSIDERING THE REPRESENTATIONS OF THE PARTIES, WHICH INCLUDED A REQUEST BY STEEL FOR LEAVE TO FILE, MADE THE FOLLOWING RULING:

IT IS THE INVARIABLE PRACTICE OF THE BOARD IN DEALING WITH LATE INTERVENTIONS OR REPLIES TO ACCEPT THEM WITHOUT ANY FORMAL MOTION FOR LEAVE

TO FILE. BY WAY OF ILLUSTRATION, IN A RECENT CASE WHERE AN INCUMBENT TRADE UNION DID NOT FILE ANY INTERVENTION, THE UNION WAS NEVERTHELESS PERMITTED TO PARTICIPATE IN THE HEARING AND ALL PROCEEDINGS. IN THE PRESENT CASE, AFTER CONSIDERING ALL THE CIRCUMSTANCES, THE INTERVENER'S REQUEST IS GRANTED. AS TO THE RESTRICTIONS SUGGESTED BY THE APPLICANT, MINE MILL, IF ANY PARTY SEEKS TO RAISE NEW ISSUES IN THE FUTURE, THIS WILL BE DEALT WITH IN ACCORDANCE WITH THE BOARD'S REGULAR POLICIES, INCLUDING THE QUESTION OF REASONABLE DILIGENCE, IF AND WHEN SUCH ATTEMPT IS MADE.

IN LETTERS DATED JUNE 21ST, 28TH, JULY 6TH AND 9TH, THE INTERVENER, STEEL, SUBMITTED FURTHER NAMES (ACCOMPANIED BY SUPPORTING DOCUMENTS) TO BE ADDED TO THOSE SUBMITTED AT THE HEARING ON JUNE 15TH. NO ACTION WAS TAKEN BY THE BOARD WITH REFERENCE TO THESE LATER FILINGS IN VIEW OF THE REQUEST OF APPLICANT'S COUNSEL TO MAKE SUBMISSIONS AT THE NEXT HEARING RESPECTING THESE LATE FILINGS. AT THE BOARD'S FIRST HEARING IN SUDBURY, COMMENCING ON JULY 14TH, THE APPLICANT ARGUED THAT THE NAMES SUBMITTED AFTER THE FIRST HEARING BY STEEL SHOULD BE CONSIDERED ONLY IF THEY APPEARED TO RELATE TO A PATTERN OF MISCONDUCT ON THE PART OF MINE MILL. AFTER TAKING TIME TO CONSIDER THE REPRESENTATIONS OF THE PARTIES, THE BOARD ON JULY 20TH MADE THE FOLLOWING RULING:

WE HAVE NOW HAD AN OPPORTUNITY TO EXAMINE THE MATERIALS FILED BY THE INTERVENER FOLLOWING THE FIRST HEARING IN THIS MATTER. WHILE WE WOULD NOT PRESUME TO SUGGEST ON THE BASIS OF WHAT WE HAVE SEEN THAT THERE IS OR IS NOT ANY OVERALL PATTERN, IT IS CLEAR THAT THE ALLEGATIONS ARE, IN PART, OF A TYPE WHICH THE BOARD WOULD NORMALLY INVESTIGATE WHERE THE EMPLOYEES CONCERNED ARE CLAIMED AS MEMBERS BY THE APPLICANT. ACCORDINGLY, WE INTEND TO CONDUCT OUR USUAL INVESTIGATIONS.

FURTHER NAMES WERE SUBMITTED BY STEEL IN LETTERS DATED JULY 28TH, AND AUGUST 11TH. INDEED, THE BOARD, AFTER DUE CONSIDERATION, ACCEPTED THE FILING OF 2 FURTHER NAMES AT THE CONCLUSION OF WHAT PROVED TO BE ITS FINAL SITTINGS IN SUDBURY ON AUGUST 26TH. THE TOTAL NUMBER OF NAMES SUBMITTED WAS 169. A FEW OF THESE TURNED OUT TO BE DUPLICATES - THAT IS, THEY HAD BEEN SUBMITTED IN EARLIER FILINGS.

IT WILL BE RECALLED THAT THE ALLEGATIONS CONTAINED IN THE INTERVENTION REFERRED TO WHAT IN BOARD PARLANCE HAS BEEN KNOWN FOR MANY YEARS AS "NON-SIGNS" AND "NON-PAYS". THESE PHRASES REFER TO CHARGES THAT AN EMPLOYEE HAS NOT SIGNED AN APPLICATION CARD FOR MEMBERSHIP IN A TRADE UNION OR, EVEN THOUGH HE MAY HAVE SIGNED, DID NOT PAY ANY MONEY ON HIS OWN ACCOUNT TOWARDS THE INITIATION FEE. THE BOARD, AFTER HAVING CARRIED OUT SOME OF ITS USUAL PRELIMINARY INVESTIGATIONS INTO THE ALLEGATIONS AND AFTER HAVING HAD AN OPPORTUNITY TO CONSIDER THE SUPPORTING DOCUMENTS ACCOMPANYING THE LISTS OF NAMES, MADE THE FOLLOWING RULING, AGAIN AT THE HEARING ON JULY 20TH:

THE MATERIAL FILED, IN A NUMBER OF INSTANCES, DOES NOT CONTAIN ALLEGATIONS OF NON-SIGN OR NON-PAY. RATHER THE CLAIM IS, "ALTHOUGH I SIGNED AND PAID, I DID SO TO GET BAR PRIVILEGES" OR "CAMP PRIVILEGES" OR FOR SOME OTHER SUCH REASON. IN SEVERAL CASES OF ALLEGED NON-PAY PREVIOUSLY FILED WITH THE BOARD AND INVESTIGATED BY IT, THE INVESTIGATION REVEALED THAT MONEY WAS PAID ALTHOUGH ONE REASON GIVEN WAS, FOR EXAMPLE, "TO GO SWIMMING AT A PARTICULAR CAMP".

THE BOARD DECIDED WITH RESPECT TO THESE MATTERS THAT IT WOULD NOT ITSELF TAKE ANY FURTHER ACTION. AND SO, TOO, THE BOARD DOES NOT INTEND ITSELF TO PURSUE THE MATTERS WHERE THERE IS NO CLAIM OF NON-SIGN OR NON-PAY. THE BOARD IS NOT NORMALLY CONCERNED WITH THE REASONS WHY AN EMPLOYEE JOINS OR DOES NOT JOIN A TRADE UNION. IF IT IS CONSIDERED THAT SOMETHING OCCURRED IN THE SIGNING UP WHICH WOULD AFFECT THE WEIGHT TO BE GIVEN TO THE EVIDENCE OF MEMBERSHIP, THAT IS A MATTER FOR A PARTY TO ALLEGE AND PROVE IN THE ORDINARY WAY. SEE ALCAN-COLONY LIMITED, O.L.R.B. MONTHLY REPORT, JUNE, 1963, P. 159.

NO REPRESENTATIONS WERE MADE TO THE BOARD FOLLOWING THIS RULING BY ANY OF THE PARTIES, NO REQUEST WAS MADE TO THE BOARD FOR THE NAMES OF THE PERSONS AFFECTED BY IT, AND NO EVIDENCE WAS CALLED AT ANY TIME BY THE INTERVENER IN SUPPORT OF THESE PARTICULAR ALLEGATIONS.

WITH REFERENCE TO THE OTHER NAMES SUBMITTED, THE BOARD MADE ITS CUSTOMARY CROSS-CHECK OF CARDS TO ASCERTAIN WHICH OF THE PERSONS WHOSE NAMES HAD BEEN SUBMITTED WERE CLAIMED AS MEMBERS AND THEN, FOLLOWING ITS USUAL PROCEDURE, INSTRUCTED CERTAIN MEMBERS OF ITS STAFF TO CONDUCT THE USUAL INTERVIEW WITH THE EMPLOYEES CLAIMED AS MEMBERS BY MINE MILL. IN ALL, SOME 53 PERSONS WERE INTERVIEWED, SOME AS FAR AWAY FROM SUDBURY AS WINDSOR AND OSHAWA. THE BOARD'S OFFICERS WERE UNABLE TO LOCATE 7 PERSONS WHO HAD IN THE MEANTIME LEFT THE EMPLOY OF THE RESPONDENT. THE NAMES OF THESE 7 PERSONS WERE RELEASED TO THE INTERVENER, WHICH MADE NO FURTHER REPRESENTATIONS TO THE BOARD IN CONNECTION THEREWITH.

FOLLOWING CONSIDERATION OF THE REPORTS OF ITS EXAMINERS (AS MADE FROM TIME TO TIME) THE BOARD DETERMINED THAT HEARINGS SHOULD BE CONDUCTED WITH RESPECT TO CARDS SUBMITTED BY MINE MILL FOR 29 PERSONS AND, ACCORDINGLY, IT CAUSED TO BE SUMMONED TO HEARINGS HELD IN SUDBURY THE EMPLOYEES, COLLECTORS AND SOME ADDITIONAL WITNESSES, ALL IN ACCORDANCE WITH ITS USUAL PRACTICE IN THIS REGARD. THE BOARD WAS UNABLE TO EFFECT SERVICE ON ONE OF THE 29 PERSONS AND ACCORDINGLY NO EVIDENCE WAS HEARD RESPECTING THAT PARTICULAR ALLEGATION, THE PARTIES AGREEING THAT IT WOULD SERVE NO USEFUL PURPOSE TO CALL THE COLLECTOR WHOM THE BOARD HAD MADE AVAILABLE AS A WITNESS. IN ADDITION, ON THE AGREEMENT OF THE PARTIES, THE BOARD HEARD EVIDENCE RESPECTING ONE OTHER CARD, ALTHOUGH IT HAD NOT MADE ITS USUAL PRELIMINARY INVESTIGATION INTO THE CIRCUMSTANCES SURROUNDING THE SIGNING

OF THE CARD IN QUESTION. (SEE P. 725) WE SHALL RETURN TO THESE MATTERS AFTER WE HAVE DETAILED CERTAIN ASPECTS OF THE BOARD'S EXAMINATION OF THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT.

IT WILL BE APPRECIATED THAT THE TASK OF SCRUTINIZING WITH CARE EACH OF THE 7,830 CARDS AND RECEIPTS AND CERTIFICATES OF MEMBERSHIP SUBMITTED BY MINE MILL, OF MATCHING THE NAMES ON THESE DOCUMENTS WITH THE 15,007 NAMES ON THE LIST SUBMITTED BY THE RESPONDENT AND OF COMPARING THE SIGNATURES ON THE MEMBERSHIP EVIDENCE WITH EMPLOYEE SIGNATURES FILED BY INCO, TOOK CONSIDERABLE TIME DESPITE THE ALLOCATION OF ALL AVAILABLE BOARD PERSONNEL TO THAT TASK. THE FIRST "COUNT" WAS RELEASED TO THE PARTIES IN LETTERS DATED JULY 9TH, 1965 AND IS AS FOLLOWS:

NUMBER OF EMPLOYEES ON LISTS
SUBMITTED BY COMPANY

SCHEDULE "A"	12,281	
" " "D"	<u>2,726</u>	15,007

LESS

RULED OUT BY BOARD ON SCHEDULE "D"		<u>399</u>
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TOTAL ON LISTS		<u><u>14,608</u></u>
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NUMBER OF APPLICATIONS FOR MEMBERSHIP
CONFIRMED BY RECEIPTS FILED:-

BY HAND MAY 12	COMBINATION APPLICATIONS	7,344	
	CERTIFICATES OF MEMBERSHIP	<u>132</u>	7,476
ORDINARY MAIL MAY 13	COMBINATION APPLICATIONS	41	
	CERTIFICATES OF MEMBERSHIP	<u>2</u>	43
REGISTERED MAIL MAY 25	COMBINATION APPLICATIONS	9	
	CERTIFICATES OF MEMBERSHIP	<u>1</u>	10
REGISTERED MAIL MAY 25	COMBINATION APPLICATIONS	319	
	CERTIFICATES OF MEMBERSHIP	<u>2</u>	<u>321</u>
			7,850

LESS

REQUESTS FOR WITHDRAWALS

BY APPLICANT UNION:-

MAY 25 - 18 CARDS, LESS 1 NOT ON COMPANY LIST	17	
JUNE 2	1	
JUNE 10	<u>2</u>	<u>20</u>

TOTAL OF APPLICANT'S CARDS AND CERTIFICATES	<u><u>7,830</u></u>
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NAMES OF PERSONS WHOSE NAMES COINCIDE WITH SCHEDULE "A"	6,088
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NAMES OF PERSONS WHOSE NAMES COINCIDE WITH SCHEDULE "D"	<u>1,282</u> 7,370
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<u>LESS</u>		
RULED OUT BY BOARD ON SCHEDULE "D"	<u>189</u>	7,181
*CARDS FOR PERSONS NOT ON LIST		
SUBMITTED BY COMPANY	428	
*DUPLICATE CARDS	32	
*CARDS RULED OUT BY BOARD ON		
SCHEDULE "D"	<u>189</u>	<u>649</u>
*(FOR PURPOSES OF RECONCILIATION)		<u>7,830</u>

ADDITIONAL INFORMATION

(1) NUMBER OF RECEIPTS NOT COUNTERSIGNED (PAYER'S NAME WRITTEN OR PRINTED ON RECEIPT)	41
(2) NUMBER OF RECEIPTS ON WHICH NO AMOUNT SHOWN	11
(3) NUMBER OF CARDS AND RECEIPTS ON WHICH NO YEAR SHOWN	6
(4) NUMBER OF CARDS NOT SIGNED (PRINTED)	1
(5) NUMBER OF CARDS AND RECEIPTS NOT SIGNED (PRINTED)	1
(6) NUMBER OF CARDS MORE THAN ONE YEAR OLD	2
(7) NUMBER OF CERTIFICATES OF MEMBERSHIP NOT VERIFIED	3

SIGNATURE CHECK

THE BOARD IS CONDUCTING A SIGNATURE CHECK WITH RESPECT TO SOME
35 CARDS AND RECEIPTS FILED BY THE APPLICANT.

ALLEGATIONS OF NON-PAY AND NON-SIGN

WITH RESPECT TO THE ALLEGATIONS AFFECTING 113 NAMES SUBMITTED BY
THE INTERVENER AT THE HEARING HELD ON JUNE 15TH, THE BOARD INTENDS TO
INQUIRE INTO ALLEGATIONS RESPECTING 18 PERSONS AT THE HEARING IN SUDBURY
COMMENCING ON JULY 14TH. THE BOARD HAS BEEN UNABLE TO INVESTIGATE
ALLEGATIONS RESPECTING TWO OF THE 113 PERSONS BECAUSE THESE PERSONS HAVE
CEASED TO BE EMPLOYEES OF THE RESPONDENT AND THEIR ADDRESSES ARE UNKNOWN
TO THE BOARD.

FURTHER INFORMATION RESPECTING THE COUNT WILL BE GIVEN TO THE PARTIES AT THE COMMENCEMENT OF THE HEARING IN SUDBURY ON JULY 14TH.

AT THE COMMENCEMENT OF THE FIRST HEARING IN SUDBURY ON JULY 14TH, THE JULY 14TH, THE BOARD ISSUED THE FOLLOWING STATEMENT REGARDING THE COUNT:

AT THE HEARING IN TORONTO ON JUNE 15TH, THE BOARD RELEASED SOME PRELIMINARY INFORMATION CONCERNING "DEFECTIVE" CARDS AND CERTIFICATES FILED BY THE APPLICANT. SOME MISUNDERSTANDING APPEARS TO EXIST ABOUT THIS MATTER AND WE THINK IT DESIRABLE TO CLARIFY THE SITUATION.

AS WE ARE SURE THE PARTIES ALL REALIZE, WHEN MEMBERSHIP EVIDENCE IS FILED IN ANY CASE, THAT EVIDENCE IS CLOSELY SCRUTINIZED BY THE BOARD'S STAFF. THEY ARE UNDER INSTRUCTION TO DRAW TO THE ATTENTION OF THE BOARD ANYTHING ON A CARD OR RECEIPT, CERTIFICATE OF MEMBERSHIP OR DUES BOOK WHICH IN ANY WAY CONSTITUTES A DEPARTURE FROM A PROPERLY COMPLETED CARD, RECEIPT, CERTIFICATE OR DUES BOOK. IN THE PRESENT CASE THE SAME CARE WAS EXERCISED BY THE STAFF AS IN ALL OTHER CASES.

AT THE FIRST HEARING WHEN THE BOARD, FOR EXAMPLE, ANNOUNCED THAT THERE WERE 328 INSTANCES OF CARDS AND CERTIFICATES HAVING DATES CHANGED, IT SHOULD BE UNDERSTOOD THAT THE MEMBERSHIP EVIDENCE IN QUESTION HAD NOT AT THAT TIME BEEN EXAMINED BY THE BOARD ITSELF. THAT TASK HAS NOW BEEN COMPLETED AND WE PROPOSE TO GIVE YOU THE RESULTS OF OUR EXAMINATION OF THE EVIDENCE.

BEFORE DOING SO, HOWEVER, WE THINK IT ADVISABLE TO GIVE THE PARTIES SOME INDICATION OF THE TYPES OF IRREGULARITIES DRAWN TO THE BOARD'S ATTENTION BY ITS STAFF.

- (1) ALL THE MATTERS REFERRED TO UNDER THE HEADING "ADDITIONAL INFORMATION" ON THE COUNT SHEET MAILED TO THE PARTIES ON JULY 9, 1965.
- (2) ALL CARDS, RECEIPTS OR CERTIFICATES WHERE THE DATE WAS IN ANY WAY INCOMPLETE, AS FOR EXAMPLE WHERE THE DAY OR MONTH OR YEAR WAS LEFT OFF THE CARD AND/OR RECEIPT.
- (3) ALL INSTANCES WHERE THE DATES HAD BEEN CHANGED IN ANY WAY, AS FOR EXAMPLE WHERE THE DAY, MONTH OR YEAR WAS CHANGED ON THE CARD AND/OR RECEIPT.
- (4) ALL INSTANCES WHERE IT WAS POSSIBLE THAT DATES HAD BEEN ADDED TO CARDS OR RECEIPTS OR BOTH, EITHER COMPLETE DATES OR PERHAPS ONLY THE DAY OR MONTH OR YEAR, OR SOME COMBINATION THEREOF.
- (5) ALL INSTANCES WHERE IN THE PLACE ON THE CARD OR RECEIPT FOR THE EMPLOYEE'S OR COLLECTOR'S SIGNATURE, THERE APPEARED A PRINTED NAME INSTEAD OF A WRITTEN SIGNATURE. INCLUDED HERE WERE CARDS SIGNED WITH A MARK, THAT IS, AN "X".

AS WE SAID EARLIER, THE BOARD HAS NOW EXAMINED ALL THE MEMBERSHIP EVIDENCE IN QUESTION AND THE RESULT OF THAT EXAMINATION IS AS FOLLOWS:

1. THE INFORMATION CONTAINED UNDER THE HEADING "ADDITIONAL INFORMATION" ON THE COUNT RELEASED TO THE PARTIES ON JULY 9TH, 1965. PART OF THE IN-

FORMATION CONCERNING "RECEIPTS NOT COUNTERSIGNED" CAME AS A RESULT OF THE SIGNATURE CHECK. THE BOARD HAS MADE NO RULINGS ON THE MEMBERSHIP EVIDENCE REFERRED TO UNDER THIS HEADING.

2. SUBJECT TO ANY REPRESENTATIONS BY THE PARTIES, THE BOARD IS PREPARED AT THE PRESENT TIME TO ACCEPT AS SATISFACTORY MANY OF THE CARDS AND RECEIPTS CONSIDERED BY IT.

THUS, FOR EXAMPLE, THE FACT THAT THE DAY ON WHICH THE CARD AND/OR RECEIPT WAS SIGNED WAS LEFT OFF WOULD APPEAR TO BE OF NO SIGNIFICANCE IF IT IS OTHERWISE CLEAR THAT THE CARD WAS SIGNED AND MONEY PAID WITHIN THE YEAR. AGAIN, THE FACT THAT THE DATE ON THE CARD IS INCOMPLETE WOULD NOT APPEAR TO BE SIGNIFICANT IF THE RECEIPT IS PROPERLY DATED.

MOREOVER, CHANGES IN DATES APPEAR TO THE BOARD TO BE INCONSEQUENTIAL IN MANY INSTANCES. THUS, A CHANGE IN THE DAY OR THE MONTH, AS FOR EXAMPLE, MARCH TO APRIL FOR A 1965 CARD AND RECEIPT WOULD NOT SEEM TO HAVE ANY POSSIBLE BEARING ON THE VALIDITY OF THE CARD. THE SAME WOULD APPEAR TO BE TRUE IN CASES WHERE THE YEAR ON THE CARD ONLY HAS BEEN CHANGED AS A RESULT OF AN OBVIOUS ERROR, FOR EXAMPLE, 1964 CHANGED TO 1965 FOR A CARD DATED EARLY IN JANUARY. HOWEVER, WHERE THE YEAR ON BOTH CARD AND RECEIPT WAS CHANGED, THE BOARD TAKES A DIFFERENT POINT OF VIEW.

IN SO FAR AS ADDITION OF DATES IS CONCERNED, THE BOARD IS PREPARED TO ACCEPT MANY CARDS WHERE THIS HAS OCCURRED AND WHERE IN THE BOARD'S OPINION THE ADDITION HAS NO BEARING ON THE VALIDITY OF THE EVIDENCE. THE ADDITION OF THE DAY OF THE MONTH, FOR EXAMPLE, IN A CASE WHERE THE CARD AND RECEIPT WERE DATED DECEMBER, 1964, WOULD SEEM TO HAVE NO EFFECT ON THE VALIDITY OF THE EVIDENCE. AGAIN, ADDITIONS ON THE CARD MAY NOT IN A NUMBER OF CASES BE SIGNIFICANT AS LONG AS THE RECEIPT IS PROPERLY DATED.

IT SHOULD BE NOTED THAT IN ALL THE ABOVE CASES OF CHANGES OR ADDITIONS, THERE DOES NOT APPEAR TO HAVE BEEN AN ATTEMPT TO CONCEAL THE ALTERATIONS.

FINALLY, THE BOARD IS PREPARED TO ACCEPT CARDS AND RECEIPTS CONTAINING PRINTED NAMES RATHER THAN SIGNATURES WHERE IT IS SATISFIED THAT THE EMPLOYEE IN QUESTION PRINTED HIS NAME ON THE CARD OR THE RECEIPT. IN THIS CONNECTION, THE BOARD HAS FOUND THE DOCUMENTS FILED BY THE RESPONDENT MOST USEFUL BECAUSE THEY CONTAIN, IN MOST CASES NOT ONLY THE EMPLOYEE'S SIGNATURE BUT ALSO AN EXAMPLE OF HIS PRINTING.

THE BOARD IS NOT CONCERNED WITH THE FACT THAT THE COLLECTOR'S NAME MAY HAVE BEEN PRINTED ON THE RECEIPT. THE IDENTITY OF THE COLLECTOR IS THE IMPORTANT THING.

3. IN THE CASE OF APPROXIMATELY 70 COMBINATION CARDS AND RECEIPTS, THE BOARD HAS DECIDED THAT FURTHER INQUIRIES ARE NECESSARY. WE WISH TO MAKE IT CLEAR THAT THE MAIN OBJECT OF THE INQUIRY IS NOT TO REMEDY WHAT OTHERWISE MIGHT BE CONSIDERED IMPROPER EVIDENCE BUT, RATHER, TO ASSURE OURSELVES THAT THERE HAS BEEN NO ATTEMPT AT DECEPTION. IN THE CASE OF

THE EVIDENCE DESCRIBED UNDER THE HEADING "ADDITIONAL INFORMATION" ON THE COUNT SHEET RELEASED TO THE PARTIES, WE ARE SATISFIED THERE HAS BEEN NO ATTEMPT AT ANY DECEPTION AND CONSEQUENTLY BOARD OFFICERS HAVE NOT BEEN ASKED TO CONDUCT INVESTIGATIONS WITH RESPECT TO ANY OF THAT EVIDENCE. HOWEVER, WHERE THERE IS ANY POSSIBILITY THAT AN ATTEMPT HAS BEEN MADE TO DECEIVE THE BOARD, WE CONCEIVE IT OUR DUTY, HAVING REGARD TO THE PROVISIONS OF SECTION 83 OF THE LABOUR RELATIONS ACT, TO INVESTIGATE THE MATTER AND THAT IS THE REASON FOR THE FURTHER INQUIRIES RESPECTING THE 70 CARDS AND RECEIPTS. THIS, OF COURSE, IS ALSO THE REASON WHY THE BOARD CONDUCTS SIGNATURE CHECKS.

THE MATTERS BEING INVESTIGATED FALL UNDER THREE MAIN CATEGORIES:

- (A) ADDITIONS TO CARDS AND/OR RECEIPTS AS, FOR EXAMPLE, THE ADDITION OF THE YEAR TO BOTH CARD AND RECEIPT;
- (B) ALTERATIONS TO CARDS AND/OR RECEIPTS AS, FOR EXAMPLE, WHERE THE YEAR HAS BEEN CHANGED ON BOTH CARD AND RECEIPT;
- (C) CASES WHERE THE DATES ON THE CARDS AND RECEIPTS GIVE RISE TO SOME DOUBT, AS FOR EXAMPLE A CARD DATED IN 1963 AND THE RECEIPT IN 1964.

IN CONCLUSION, WE WISH TO MAKE IT CLEAR THAT DEPENDING ON THE RESULTS OF THE BOARD'S INVESTIGATIONS, ANY MATTERS THAT REQUIRE FURTHER ACTION WILL BE DEALT WITH IN THE SAME WAY AS CASES OF "NON-PAY", THAT IS, THE PERSONS INVOLVED WILL BE SUMMONED TO APPEAR AT A HEARING OF THE BOARD.

IT WILL BE NOTED THAT THE WORDS "SUBJECT TO ANY REPRESENTATIONS BY THE PARTIES" PRECEDED THE BOARD STATEMENT THAT IT WAS PREPARED TO ACCEPT "AT THE PRESENT TIME" MANY CARDS AND RECEIPTS CONSIDERED BY IT. AT NO TIME FOLLOWING THE RELEASE OF THE ABOVE STATEMENT HAS ANY PARTY MADE ANY REPRESENTATIONS TO THE BOARD ON THE MATTERS DEALT WITH IN HEADING "2" IN THE STATEMENT.

IN ADDITION TO THE "DEFECTIVE" CARDS WHICH WERE REFERRED TO US BY THE BOARD'S STAFF FOR RULINGS, MANY OTHER CARDS WERE SIMILARLY REFERRED FOR DECISION ON THE QUESTION OF WHETHER SIGNATURES ON THE CARDS MATCHED THE SPECIMEN SIGNATURES FILED BY THE RESPONDENT. THE NUMBER OF CARDS IN BOTH CATEGORIES SO REFERRED TOTALLED OVER 730. AS A RESULT OF OUR EXAMINATION OF THESE CARDS, EXAMINERS WERE INSTRUCTED TO INTERVIEW 98 EMPLOYEES. SUCH INTERVIEWS WERE IN ADDITION TO THOSE CONDUCTED IN CONNECTION WITH THE ALLEGATIONS OF THE INTERVENER. TWO PERSONS WHO HAD LEFT THE EMPLOY OF THE RESPONDENT COMPANY COULD NOT BE LOCATED. AFTER CONSIDERING THE REPORTS OF THE EXAMINERS, THE BOARD DETERMINED THAT IT WOULD BE NECESSARY TO HOLD HEARINGS WITH RESPECT TO THE MEMBERSHIP EVIDENCE SUBMITTED BY MINE MILL FOR ONLY 6 OUT OF THE 96 PERSONS INTERVIEWED. THE BOARD WAS SATISFIED THAT THERE WERE NO IRREGULARITIES IN THE OTHER 90 CARDS. THE 6 EMPLOYEES IN QUESTION AND THE COLLECTORS CONCERNED WERE SUMMONED TO APPEAR AT HEARINGS HELD IN SUDBURY. REGRETABLELY, ONE OF THE EMPLOYEES SO SUMMONED WAS KILLED LATER ON IN A TRAFFIC ACCIDENT. THE EVIDENCE HEARD WILL BE DEALT WITH ALONG WITH THE EVIDENCE HEARD IN CONNECTION WITH THE ALLEGATIONS OF THE INTERVENER.

FOLLOWING THE COMPLETION OF OUR EXAMINATION OF THE MEMBERSHIP EVIDENCE, INCLUDING THE EXAMINERS' REPORTS OF ALL PERSONS INTERVIEWED BY THEM, THE SECOND CHECK WAS UNDERTAKEN AND COMPLETED AND THE RESULTS HANDED TO THE PARTIES AT THE COMMENCEMENT OF THE FINAL HEARING IN TORONTO ON SEPTEMBER 8TH. THE SECOND "COUNT", WHICH INCORPORATES THE RESULTS OF ALL BOARD RULINGS WITH RESPECT TO ALL ASPECTS OF THE MEMBERSHIP EVIDENCE, EXCEPT AS NOTED HEREAFTER, IS AS FOLLOWS:

NUMBER OF EMPLOYEES ON LISTS
SUBMITTED BY COMPANY

SCHEDULE	"A"	12,281	
"	"B"	<u>2,726</u>	15,007

LESS

RULED OUT BY BOARD ON
SCHEDULE "D"

	<u>438</u>	
TOTAL ON LISTS	<u><u>14,569</u></u>	

NUMBER OF APPLICATIONS FOR MEMBERSHIP
CONFIRMED BY RECEIPTS FILED:-

BY HAND MAY 12	COMBINATION APPLICATIONS	7,344	
	CERTIFICATES OF MEMBERSHIP	<u>132</u>	7,476
ORDINARY MAIL MAY 13	COMBINATION APPLICATIONS	41	
	CERTIFICATES OF MEMBERSHIP	<u>2</u>	43
REGISTERED MAIL MAY 25	COMBINATION APPLICATIONS	9	
	CERTIFICATES OF MEMBERSHIP	<u>1</u>	10
REGISTERED MAIL MAY 25	COMBINATION APPLICATIONS	319	
	CERTIFICATES OF MEMBERSHIP	2	<u>321</u> 7,850

LESS

REQUESTS FOR WITHDRAWALS

BY APPLICANT UNION:-

MAY 25 - 18 CARDS, LESS 1 NOT
ON COMPANY LIST

	17	
JUNE 2 -	1	
JUNE 10 -	<u>2</u>	20
TOTAL OF APPLICANT'S CARDS AND CERTIFICATES		<u><u>7,830</u></u>

NAMES OF PERSONS WHOSE NAMES COINCIDE
WITH SCHEDULE "A" 6,132

NAMES OF PERSONS WHOSE NAMES COINCIDE
WITH SCHEDULE "D" 1,296
7,428

LESS RULED OUT BY BOARD ON SCHEDULE
"D"

<u>214</u>	<u><u>7,214</u></u>
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RECONCILIATION OF CARDS

TOTAL OF CARDS AS SHOWN ABOVE	7,214	
CARDS FOR PERSONS NOT ON LISTS SUBMITTED BY COMPANY	365	
CARDS FOR PERSONS AS TO WHOM BOARD IN DOUBT AS TO WHETHER ON COMPANY LISTS	4	
DUPLICATE CARDS	33	
CARDS RULED OUT BY BOARD ON SCHEDULE "D"	<u>214</u>	<u>7,830</u>

ADDITIONAL INFORMATION RE COUNT

(1) NUMBER OF RECEIPTS NOT COUNTERSIGNED (PAYER'S NAME WRITTEN OR PRINTED ON RECEIPT)	41
(2) NUMBER OF RECEIPTS NOT COUNTERSIGNED (PAYER'S NAME WRITTEN OR PRINTED ON RECEIPT) INVESTIGATED BY BOARD AND BOARD SATISFIED MONEY PAID AND NO ATTEMPT TO SIMULATE PAYER'S SIGNATURE	8
(3) NUMBER OF RECEIPTS ON WHICH NO AMOUNT SHOWN	10
(4) NUMBER OF RECEIPTS ON WHICH NO AMOUNT SHOWN INVESTIGATED BY BOARD IN CONNECTION WITH ANOTHER MATTER - BOARD NOW SATISFIED AT LEAST \$1.00 PAID	1
(5) NUMBER OF CARDS AND RECEIPTS ON WHICH NO YEAR SHOWN	7
(6) NUMBER OF CARDS NOT SIGNED (PRINTED)	1
(7) NUMBER OF CARDS AND RECEIPTS NOT SIGNED (PRINTED)	1
(8) NUMBER OF CARDS MORE THAN ONE YEAR OLD	2
(9) NUMBER OF CERTIFICATES OF MEMBERSHIP NOT VERIFIED	3
(10) MISCELLANEOUS	
RECEIPT BEARING COLLECTOR'S INITIALS ONLY	1
CARDS BOARD UNABLE TO INVESTIGATE BECAUSE EMPLOYEES OUT OF PROVINCE, OR BOARD UNABLE TO LOCATE	
ALLEGED NON-PAYS	7
POSSIBLE DEFECTIVE CARDS	
YEAR ADDED TO CARD AND RECEIPT	1
CARD DATED 1965, RECEIPT DATED 1964	1

NOTE: THE ABOVE FIGURES DO NOT REFLECT MATTERS STILL AWAITING DETERMINATION BY THE BOARD FOLLOWING THE HEARINGS SCHEDULED FOR SEPTEMBER 8TH AND 9TH, 1965.

TWO POINTS SHOULD BE NOTED IN CONNECTION WITH THE ABOVE STATEMENT. AT THE TIME OF ITS RELEASE THE BOARD HAD MADE NO RULINGS ON ANY OF THE CARDS LISTED UNDER THE HEADING "ADDITIONAL INFORMATION RE COUNT". THIS MATTER WILL BE ADVERTED TO LATER ON IN THIS DECISION. FURTHER, AS IS SET OUT IN THE STATEMENT, THE FIGURES DID NOT REFLECT MATTERS STILL AWAITING DETERMINATION BY THE BOARD AS A RESULT OF THE EVIDENCE IT HEARD OF ALLEGED IRREGULARITIES WITH RESPECT TO 34 CARDS FILED BY MINE MILL. IN OTHER WORDS, THE FIGURES REPRESENTED THE MOST FAVOURABLE POSITION OF THAT UNION.

ANALYSIS OF EVIDENCE HEARD BY BOARD

THIS BRINGS US, THEN, TO A CONSIDERATION OF THE EVIDENCE CONCERNING THE 34 CARDS REFERRED TO ABOVE. THIS FIGURE, PLUS 2 CARDS AS TO WHICH NO EVIDENCE WAS HEARD, REPRESENTS THE TOTAL NUMBER OF CARDS, OUT OF THE 7,850 CARDS FILED BY MINE MILL, IN RESPECT TO WHICH THE BOARD FOUND IT NECESSARY TO CONDUCT HEARINGS. THIRTY OF THESE RESULTED FROM ALLEGATIONS OF "NON-SIGN" OR "NON-PAY" MADE BY STEEL, AND THE REMAINING 6 CASES AS A RESULT OF THE BOARD'S OWN INVESTIGATIONS. THE HEARINGS WERE HELD IN SUDBURY ON JULY 14TH, 15TH, 20TH, 21ST, AUGUST 4TH, 5TH, 25TH AND 26TH AND CONCLUDED WITH FURTHER EVIDENCE AND ARGUMENT IN TORONTO ON SEPTEMBER 8TH. DURING THE HEARINGS TESTIMONY WAS HEARD FROM SOME 77 WITNESSES, 7 OF WHOM TESTIFIED ON MORE THAN ONE OCCASION. DURING THE HEARINGS ALL PARTIES WERE AFFORDED A FULL OPPORTUNITY TO EXAMINE AND CROSS-EXAMINE THE WITNESSES, TO CALL SUCH FURTHER EVIDENCE AS THEY DEEMED ADVISABLE AND TO ARGUE ALL MATTERS IN ISSUE. IT IS NOT OUR INTENTION TO REVIEW ALL OF THE EVIDENCE IN DETAIL. WHILE IT IS APPRECIATED THAT FOR THOSE UNFAMILIAR WITH THE CASE, THE ANALYSIS WHICH FOLLOWS MAY AT TIMES APPEAR CONFUSING, IT WAS FELT THAT THIS DECISION COULD BE MORE SPEEDILY RELEASED IF WE CONFINED OURSELVES TO THE BARE ESSENTIALS. IN DEALING WITH THE EVIDENCE THE BOARD HAS FOUND IT CONVENIENT TO FOLLOW THE CATEGORIES SELECTED BY COUNSEL FOR THE INTERVENER, EXCEPT IN THOSE CASES WHERE THE SAME COLLECTOR IS INVOLVED IN MORE THAN ONE CATEGORY. AT THIS STAGE, WE ARE CONCERNED PRIMARILY WITH FACT FINDING. OF COURSE, CARDS WHICH WE HAVE FOUND TO BE IN ORDER REQUIRE NO FURTHER CONSIDERATION. BUT, WHERE WE HAVE FOUND IRREGULARITIES, THEN, IN THE MAIN, WE HAVE LEFT THE CONSEQUENCES WHICH MAY FLOW THEREFROM TO BE DEALT WITH LATER IN THIS DECISION.

CATEGORY 1

THE FIRST CATEGORY WE TURN TO IS THAT INVOLVING PACKER, PHILLIPS AND PAQUET, THREE INCIDENTS WHICH COUNSEL FOR THE INTERVENER STATED HE WAS NOT PRESSING. ON REVIEWING THE EVIDENCE, WE ARE SATISFIED THAT THE MEMBERSHIP CARDS SUBMITTED BY THE APPLICANT FOR THESE THREE EMPLOYEES ARE IN ORDER AND, ACCORDINGLY, THE CARDS ARE GOOD CARDS.

CATEGORY 2

THE NEXT CATEGORY WITH WHICH WE INTEND TO DEAL IS DESCRIBED BY COUNSEL FOR THE INTERVENER AS "ACKNOWLEDGED CASES OF NON-PAY". COUNSEL

PLACES EIGHT INCIDENTS IN THIS CATEGORY. IN THE FIRST OF THESE GOUDREAU, THE EMPLOYEE, GAVE HIS EVIDENCE THROUGH AN INTERPRETER. WHILE GOUDREAU DOES NOT READ ENGLISH OR FRENCH, HE TESTIFIED HE COULD UNDERSTAND ENGLISH A LITTLE, AND THE CONVERSATION BETWEEN HIM AND THE COLLECTOR, CHELLEW, WAS IN ENGLISH. WE FIND HIS TESTIMONY BEFORE THE BOARD CONFUSING AT TIMES AND, IN ALL THE CIRCUMSTANCES, WE PREFER TO ACCEPT THE EVIDENCE OF CHELLEW WHERE IT DIFFERS FROM THAT OF GOUDREAU. EVEN SO, IT IS CLEAR THAT GOUDREAU DID NOT IN FACT PAY ANY MONEY ON HIS OWN BEHALF ON MAY 18TH, 1965 WHEN HE SIGNED THE CARD. ACCORDING TO CHELLEW, GOUDREAU, WHOM HE HAD KNOWN FOR OVER A YEAR, APPROACHED CHELLEW AND ASKED HIM FOR A CARD AND THEN ASKED FOR A LOAN OF A DOLLAR, TELLING HIM HE WOULD REPAY IT LATER. NO OTHER ARRANGEMENTS FOR RE-PAYMENT WERE MADE. CHELLEW ASKED GOUDREAU IF HE COULD TURN THE CARD IN THAT NIGHT (NO DOUBT BECAUSE OF THE LATE DATE) AND GOUDREAU AGREED TO THIS. SUBSEQUENTLY, CHELLEW ASKED GOUDREAU A COUPLE OF TIMES FOR HIS DOLLAR BUT GOUDREAU KEPT STALLING AND FINALLY IGNORED HIM AND CHELLEW NEVER GOT HIS DOLLAR BACK. CHELLEW SAID THAT HE SIGNED UP 8 PERSONS OVER A PERIOD OF ABOUT A MONTH; OUR RECORDS SHOW THAT 7 CARDS WERE SUBMITTED IN WHICH HE WAS THE COLLECTOR. CHELLEW, AN EMPLOYEE OF INCO, WAS A VOLUNTARY ORGANIZER AND HAS NEVER HELD ANY OFFICE IN OR HAD ANY RESPONSIBLE POSITION WITH THE APPLICANT UNION.

IN THE NEXT INSTANCE IN THIS CATEGORY THE COLLECTOR, OSJANIKOW, AN EMPLOYEE OF INCO AND A VOLUNTARY ORGANIZER, WHO HAS NEVER HELD OFFICE IN MINE MILL AND WHO RECEIVED NO EXPENSE MONEY, SIGNED UP TWO PERSONS, D. LAVOIE AND R. LOTTE, ON MAY 6TH, 1965. BOTH LAVOIE AND LOTTE HAD JUST COMMENCED WORK AT INCO AND, ALTHOUGH STRANGERS TO OSJANIKOW, HE LOANED THEM EACH A DOLLAR ON THEIR PROMISE TO REPAY AND TURNED IN THEIR CARDS, AGAIN DOUBTLESS BECAUSE OF THE LATE DATE. THE INCIDENT ABOUT LOTTE WAS VOLUNTEERED BY OSJANIKOW WHEN GIVING EVIDENCE ABOUT THE LAVOIE CARD WHICH THE BOARD HAD PREVIOUSLY INVESTIGATED. THE PARTIES AGREED IT WOULD NOT BE NECESSARY TO CALL LOTTE. OSJANIKOW CLAIMED LOTTE REPAID THE DOLLAR BUT ADMITTED THAT LAVOIE DID NOT. IT DOES NOT APPEAR THAT ANY DEFINITE ARRANGEMENTS FOR RE-PAYMENT WERE MADE OTHER THAN THAT LAVOIE WAS TO GIVE OSJANIKOW THE DOLLAR. LAVOIE SAW HIM A COUPLE OF TIMES AT WORK BUT OSJANIKOW MADE NO EFFORT TO COLLECT THE DOLLAR. OSJANIKOW TESTIFIED HE SIGNED UP ABOUT 30 PERSONS. OUR RECORDS SHOW THAT 24 CARDS WERE SUBMITTED WITH THE NAME OF OSJANIKOW AS THE COLLECTOR, 3 OF WHICH WERE "LOST" CARDS - THAT IS, FOR PERSONS NOT ON THE RESPONDENT'S LIST OF EMPLOYEES.

IN THE THIRD CASE IN THIS CATEGORY, MEALEY, A VOLUNTARY ORGANIZER WHO HAD NOT RECEIVED ANY EXPENSE MONEY AND WHO HAS NEVER BEEN AN OFFICER OF THE APPLICANT UNION, TURNED SEVERAL OF HIS CARDS OVER TO ONE, ST. CLAIR, WHO HAS NOW LEFT THE EMPLOY OF RESPONDENT AND COULD NOT BE LOCATED. ACCORDING TO MEALEY, ST. CLAIR RETURNED TWO OF THE CARDS TO HIM, EACH ACCOMPANIED BY A DOLLAR. ONE OF THE CARDS WAS FOR AN EMPLOYEE NAMED CROWDER WHO TESTIFIED THAT HE WAS SIGNED UP ON FEBRUARY 12TH, 1965, BY A PERSON HE HAD NEVER SEEN BEFORE, BUT IT WAS NOT MEALEY. CROWDER'S EVIDENCE, WHICH WE ACCEPT, WAS THAT HE DID NOT HAVE A DOLLAR WITH HIM AND HE PROMISED TO PAY THE DOLLAR LATER BUT THAT, ALTHOUGH HE STILL INTENDED TO PAY, HE NEVER SAW THE MAN AGAIN. CROWDER, WHO WAS IN A HURRY TO CATCH A RIDE, DID NOT COUNTERSIGN THE RECEIPT PORTION OF THE CARD. ON THE EVIDENCE BEFORE US WE FIND THAT MEALEY WROTE CROWDER'S NAME ON THE RECEIPT ALTHOUGH WITHOUT ANY ATTEMPT TO SIMULATE CROWDER'S SIGNATURE. MEALEY ESTIMATED THAT HE SIGNED UP SOME 29 CARDS AND HE STATED FURTHER THAT, APART FROM THE TWO CASES REFERRED TO ABOVE, HE PERSONALLY COLLECTED THE MONEY IN THE 27 OTHER CASES. OUR RECORDS SHOW THAT

24 CARDS WERE SUBMITTED BY MINE MILL BEARING MEALEY'S SIGNATURE AS COLLECTOR. TWO OF THESE WERE "LOST" CARDS.

IN THE NEXT CASE IN THIS CATEGORY, THAT INVOLVING McLEOD, THE COLLECTOR, ONE McISAAC, UNFORTUNATELY COULD NOT BE LOCATED AND SO THE BOARD MUST DEAL WITH IT SOLELY ON THE BASES OF McLEOD'S TESTIMONY THAT HE DID NOT PAY ANY MONEY TO McISAAC. ACCORDING TO McLEOD, THE SIGNING UP TOOK PLACE AT HIS RESIDENCE AFTER HE AND THE COLLECTOR HAD BEEN DRINKING FOR THREE HOURS IN A HOTEL. THEY WERE BOTH DUE TO GO ON SHIFT AT 4:00 O'CLOCK, BUT McLEOD DID NOT GO TO WORK BECAUSE HE WAS TOO DRUNK. AFTER CAREFULLY CONSIDERING ALL OF HIS TESTIMONY, WE ARE NOT PREPARED TO FIND THAT ANY DOUBT HAS BEEN CAST ON THE CARDS SIGNED UP BY McISAAC.

THE INCIDENT INVOLVING S.R.D. MUNROE APPEARS TO BE A CLEAR CASE OF THE COLLECTOR, BEATTIE, MAKING A LOAN TO MUNROE, A COMPLETE STRANGER, WHO SIGNED THE CARD AT THE END OF HIS FIRST DAY AT WORK FOR THE RESPONDENT, NAMELY, ON APRIL 30TH, 1965. WHEN MUNROE TOLD BEATTIE HE HAD NO MONEY, BEATTIE SAID HE WOULD LEND IT TO HIM AND MUNROE AGREED TO REPAY IT. HOWEVER, HE DID NOT DO SO, AND BEATTIE MADE NO EFFORT TO RECOVER HIS DOLLAR FROM MUNROE OR EVEN TO ASCERTAIN WHETHER MUNROE HAD PAID THE DOLLAR TO BEATTIE'S BROTHER, AS HAD BEEN SUGGESTED HE MIGHT DO WHEN THE SIGN-UP TOOK PLACE. IT IS CLEAR THEN THAT WE HAVE ANOTHER INSTANCE OF NO FINANCIAL SACRIFICE BY THE EMPLOYEE - A LOAN BY THE COLLECTOR AND NO EFFORT ON THE PART OF THE COLLECTOR TO RECOVER HIS MONEY. FURTHERMORE, BEATTIE, IN ANSWERING THE QUESTION AS TO WHETHER HE MADE OTHER LOANS, WOULD NOT MAKE AN OUTRIGHT DENIAL. HIS ANSWERS WERE, "NONE THAT I CAN RECALL" AND "NO, I DON'T THINK SO". BEATTIE ESTIMATED THAT HE SIGNED UP ABOUT 20 PERSONS. HOWEVER, ONLY 7 CARDS WERE SUBMITTED TO THE BOARD BEARING HIS NAME AS A COLLECTOR. HE WAS A VOLUNTARY ORGANIZER WHO HAD NEVER HELD OFFICE IN THE APPLICANT UNION.

THE INCIDENT INVOLVING R. H. HUBERT IS COMPLICATED BY THE FACT THAT THE PERSON WHOSE NAME APPEARS ON THE CARD AS A COLLECTOR, ART COTTON, COULD NOT BE FOUND. HUBERT TESTIFIED THAT HE WAS SIGNED UP BY ONE, CHAISSON, WHO IN TURN DENIED THIS. AFTER CONSIDERING THE EVIDENCE, INCLUDING THE VARIOUS HAND-WRITING SPECIMENS BEFORE THE BOARD, WE ARE SATISFIED THAT CHAISSON HAD NO PART IN SIGNING UP HUBERT. THAT BEING THE CASE, HUBERT'S MEMORY AND CREDIBILITY ARE SUSPECT AT THE VERY LEAST. FURTHERMORE, IT WOULD APPEAR THAT ON A LATER OCCASION HUBERT WAS INTERVIEWED BY AN ORGANIZER FOR THE APPLICANT, ONE SCOTT, WHO WAS ACCOMPANIED BY OTHER UNIDENTIFIED MINE MILL PEOPLE, AND AT THAT INTERVIEW HUBERT ASSURED SCOTT THAT THERE WAS NOTHING WRONG WITH HIS CARD. IN THESE CIRCUMSTANCES, WE ARE NOT PREPARED TO FIND THAT ANY DOUBT HAS BEEN CAST ON THE CARDS, INCLUDING HUBERT'S, ON WHICH COTTON'S NAME APPEARS AS THE COLLECTOR.

THE SEVENTH INCIDENT IN THIS CATEGORY CONCERNS AN EMPLOYEE NAMED SMITH. HAVING REGARD TO THE SEVERAL DIFFERENT STORIES TOLD BY SMITH AND TO HIS ADMITTED LIES, WE ARE NOT PREPARED TO ACCEPT HIS EVIDENCE WHERE IT DIFFERS FROM THAT OF THE COLLECTOR, WUNSCH. ON THIS BASIS, WE FIND THAT A THIRD PERSON, SEQUIN, BROUGHT SMITH TO WUNSCH. SMITH INTENDED TO JOIN THE APPLICANT WHEN HE SIGNED THE CARD BUT HE DID NOT HAVE A DOLLAR. THE TRANSACTION TOOK PLACE ON MAY 22ND, 1965, AND THE LAST DAY FOR TURNING IN CARDS TO THE APPLICANT WAS MAY 25TH. WUNSCH EXPLAINED THIS TO SMITH AND, AFTER POINTING OUT THAT MAY 23RD AND 24TH WERE HIS REGULAR DAYS OFF, HE OFFERED TO LOAN SMITH A

DOLLAR, EVEN THOUGH SMITH WAS REALLY A STRANGER TO HIM. SMITH AGREED TO THIS. AT THE TIME, SMITH INTENDED TO PAY BACK THE DOLLAR BUT DID NOT IN FACT DO SO. WUNSCH, ALTHOUGH HE SAW SMITH ON A FEW OCCASIONS AFTER THAT, MADE NO EFFORT TO COLLECT THE DOLLAR OWING TO HIM. WUNSCH BELIEVES HE SIGNED UP SOME 18 OR 19 PERSONS. OUR RECORDS SHOW 20 CARDS BEARING HIS NAME AS COLLECTOR. HE WAS A VOLUNTARY ORGANIZER, RECEIVED NO COMPENSATION AND HAS NEVER BEEN AN OFFICER OF THE APPLICANT TRADE UNION.

THE LAST CARD INCLUDED IN THIS CATEGORY IS FOR BECHARD. THE COLLECTOR IN THIS CASE WAS WILLIAM SORENSON, WHO WAS ALSO THE COLLECTOR INVOLVED IN THE FLYNN INCIDENT, WHICH COUNSEL FOR THE INTERVENER HAS PLACED UNDER ANOTHER CATEGORY. WE INTEND TO DEAL NOW WITH BOTH CARDS.

FLYNN DENIED MAKING ANY PAYMENT TO SORENSON, WHILE THE LATTER CLAIMED FLYNN PAID. FLYNN UNDOUBTEDLY WAS ANXIOUS TO JOIN BECAUSE HE SOUGHT OUT A FELLOW EMPLOYEE, WRIGHT, AND ASKED HIM WHERE HE COULD SIGN UP. WRIGHT TOOK HIM TO SORENSON. IT SEEMS CLEAR THAT THE CARD AND RECEIPT WERE FILLED OUT AT THAT TIME. FLYNN, WHO WAS A STRANGER TO SORENSON, SAID HE HAD NO MONEY WITH HIM AND IT WAS AGREED THAT SORENSON WOULD COLLECT FROM HIM LATER ON. HOWEVER, HE NEVER DID IN FACT PAY THE MONEY. FLYNN ALSO SAID THAT TWO OR THREE WEEKS LATER HE TOLD SORENSON TO TEAR UP THE CARD. SORENSON AT FIRST TESTIFIED THAT FLYNN DID NOT PAY AT THE TIME HE SIGNED THE CARD BUT PAID UP LATER ON. WHEN FACED WITH THE CARD IN QUESTION AND THE FACT THAT THE CARD AND RECEIPT PORTION ATTACHED THERETO BORE THE SAME DATE, HE CHANGED HIS STORY AND SAID FLYNN MUST HAVE PAID WHEN HE SIGNED BECAUSE HIS PRACTICE WAS NEVER TO DATE THE CARD AND RECEIPT UNTIL THE MONEY WAS PAID. SORENSON ALSO RELIED ON A NOTE BOOK IN WHICH HE KEPT THE NAMES OF ALL PERSONS HE SIGNED UP. THE BOOK CONTAINED FLYNN'S NAME AND, ACCORDING TO SORENSON, SINCE THERE WAS NO NOTATION OPPOSITE THE NAME OF FLYNN, THIS MEANT HE MUST HAVE PAID. SORENSON ADMITTED TO THE BOARD AT THIS POINT THAT THERE WAS ONE NAME IN THE BOOK - BECHARD'S - WHICH CONTAINED A NOTATION TO THE EFFECT THAT BECHARD'S HAD NOT PAID HIS DOLLAR. HE HAD RUN ACROSS THE NAME WHEN LOOKING THROUGH THE BOOK IN CONNECTION WITH FLYNN. SORENSON ADMITTED THAT HIS CHIEF PURPOSE IN KEEPING THE LIST WAS TO GUARD AGAINST FORGERIES. THE BOOK CONTAINED NO DATES AS TO WHEN PERSONS WERE SIGNED UP OR WHEN THEY PAID.

IT IS CLEAR THAT SORENSON HAD NO RECOLLECTION OF THE DETAILS OF THE FLYNN INCIDENT (WHICH OCCURRED IN JULY OF 1964) AND WAS RELYING ON HIS PRACTICE AND ON THE NOTE BOOK. BUT IT IS EQUALLY CLEAR THAT HIS CLAIMED PRACTICE OF NOT DATING CARD AND RECEIPT WAS DEPARTED FROM IN AT LEAST TWO CASES. THIS WAS ADMITTEDLY SO IN THE CASE OF BECHARD, AND WE MUST FIND IT TO BE THE CASE WITH RESPECT TO FLYNN. IN THIS CONNECTION THE TESTIMONY OF WRIGHT, WHO INTRODUCED FLYNN TO SORENSON, IS OF SOME SIGNIFICANCE. WRIGHT TESTIFIED THAT MONEY WAS NOT PAID AT THE TIME FLYNN SIGNED ALTHOUGH THE CARD WAS COMPLETED IN FULL ON THAT OCCASION. THEN, LATER, ACCORDING TO WRIGHT, SORENSON SPOKE TO HIM ABOUT THE FACT THAT FLYNN HAD NOT PAID AND WRIGHT IN TURN SPOKE TO FLYNN ABOUT IT. CLEARLY, THEN, SORENSON DEPARTED FROM HIS PRACTICE IN FLYNN'S CASE. WHILE IT MAY BE ARGUED THAT WE OUGHT TO BELIEVE SORENSON BECAUSE, AFTER ALL, HE DID VOLUNTEER THE INFORMATION ABOUT BECHARD, THIS INFERENCE IS OPEN TO SERIOUS DOUBT WHEN IT IS CONSIDERED ALONG WITH THE FACT THAT SORENSON WAS SUMMONED TO APPEAR BEFORE THE

BOARD, IN CONNECTION WITH THE BECHARD CASE, WHILE WAITING TO TESTIFY IN THE FLYNN INCIDENT. HE MAY WELL HAVE THOUGHT IT THE WISER COURSE TO DISCLOSE THE FACTS ABOUT THE BECHARD SIGN-UP. DESPITE THE FACT THAT FLYNN ON SEVERAL OCCASIONS PRODUCED THE DUES CARD WHICH HE HAD RECEIVED FROM THE APPLICANT AND DID SO WHEN WRIGHT SPOKE TO HIM, IN ALL THE CIRCUMSTANCES, WE ACCEPT FLYNN'S EVIDENCE IN PREFERENCE TO THAT OF SORENSON AND, ACCORDINGLY, FIND THAT FLYNN MADE NO FINANCIAL SACRIFICE.

THIS FACT IS ADMITTED BY SORENSON IN CASE OF BECHARD, WHO WAS A WORKING ACQUAINTANCE OF SORENSON'S. BECHARD WAS SUPPOSED TO PAY THE LOAN BACK AS SOON AS HE COULD BUT, APART FROM THIS, THERE WERE NO OTHER ARRANGEMENTS ABOUT REPAYMENT. SORENSON'S EXPLANATION IS THAT HE HAD FORGOTTEN ALL ABOUT IT UNTIL GOING THROUGH HIS NOTE BOOK IN CONNECTION WITH THE FLYNN INCIDENT. IT IS TRUE THAT THE CARD WAS SIGNED IN SEPTEMBER, 1964 BUT, ACCORDING TO BECHARD, WHOSE EVIDENCE WE HAVE NO REASON TO DOUBT, SORENSON SPOKE TO HIM ABOUT FIVE TIMES IN AN ATTEMPT TO COLLECT THE DOLLAR, TWO OF THE ATTEMPTS OCCURRING AFTER CHRISTMAS, 1964. SORENSON COULD RECALL ONLY ONE OCCASION, AND THIS WAS BEFORE CHRISTMAS, 1964. THERE IS NO EXPLANATION AS TO WHEN OR WHY THE CARD WAS TURNED IN TO MINE MILL. SORENSON WAS A VOLUNTARY COLLECTOR PARTICIPATING IN HIS FIRST CAMPAIGN. HE HAD NEVER BEEN AN OFFICER OF THE APPLICANT UNION AND RECEIVED NO EXPENSE MONEY. HE WAS OBVIOUSLY PROUD OF HIS RECORD OF SIGNING UP, ON HIS OWN ESTIMATE, OVER A HUNDRED PERSONS. THE BOARD'S CHECK ON CARDS FILED SHOWED 103 CARDS (6 OF WHICH WERE "LOST" CARDS) SUBMITTED BEARING SORENSON'S NAME AS COLLECTOR. HIS ORGANIZING ACTIVITIES EXTENDED FROM JUNE OF 1964 TO MAY OF 1965.

BY WAY OF SUMMARY OF THE INCIDENTS EXAMINED IN THIS CATEGORY, THE BOARD FINDS THAT THERE ARE 8 CASES OF LOANS IN AT LEAST 7 OF WHICH THE MONEY WAS NOT REPAID. IN 7 OF THE CASES LOANS WERE MADE BY COLLECTORS AND IN ONE THE LOAN WAS MADE BY A PERSON WHO DID THE SIGNING UP BUT WHOSE NAME DOES NOT APPEAR AS THE COLLECTOR. FIVE OF THE CARDS WERE SIGNED UP IN THE LAST STAGES OF THE CAMPAIGN. NONE OF THE 6 COLLECTORS INVOLVED HAD EVER HELD OFFICE IN MINE MILL OR WAS A PROFESSIONAL ORGANIZER. FOUR DID NOT RECEIVE ANY EXPENSE MONEY, AND THERE IS NO EVIDENCE ON THIS POINT ABOUT THE OTHER 2. ALL WERE EMPLOYEES OF THE RESPONDENT AT THE TIME OF THEIR ORGANIZATIONAL ACTIVITIES.

CATEGORY 3

COUNSEL FOR THE INTERVENER CALLED HIS NEXT CATEGORY "CASES OF UNUSUAL LOANS". IN THIS CATEGORY HE PLACED THREE CARDS, THOSE OF CHISHOLM, PERRAULT AND R. CARRIERE. THE DIFFICULTY WITH THE CHISHOLM CASE IS THAT HENDERSON, A KEY FIGURE IN THE TRANSACTION, COULD NOT BE LOCATED. WE ARE LEFT THEREFORE WITH THE CONFLICTING STORIES OF CHISHOLM AND THE COLLECTOR, VUSKANS. IN OUR VIEW, CHISHOLM'S TESTIMONY IS SUSPECT IN TWO RESPECTS. IN THE FIRST PLACE, HE IN EFFECT CHANGES HIS STORY AFTER BEING REMINDED OF HIS STATEMENTS TO THE BOARD'S INVESTIGATOR WHICH, INCIDENTALLY, DIFFERED AGAIN FROM HIS TESTIMONY BEFORE THE BOARD UNDER CROSS-EXAMINATION BY COUNSEL. IN THE SECOND PLACE, WE ARE OF THE OPINION THAT CHISHOLM WAS BEING LESS THAN FRANK WHEN QUESTIONED AS TO THE WHEREABOUTS OF HENDERSON, A WITNESS TO AND KEY FIGURE IN THE TRANSACTION. IN THESE CIRCUMSTANCES, WE ARE NOT PREPARED TO FIND THAT DOUBT HAS BEEN CAST ON ANY OF THE CARDS SUBMITTED TO THE APPLICANT BY VUSKANS.

IN PERRAULT'S CASE WE HAVE NO HESITATION IN FINDING THAT ON THE NIGHT PERRAULT SIGNED HIS CARD MARSHALL, THE COLLECTOR, SAID TO HIM, "WHY PAY LATER? I OWE YOU \$5.00 AND I'LL TAKE IT OFF THE LOAN". PERRAULT AGREED TO THIS. THE ONLY QUESTION THAT ARISES IS DID MARSHALL OWE PERRAULT THE \$5.00? MARSHALL WAS UNSHAKEN IN HIS TESTIMONY ON THIS POINT. ON THE OTHER HAND, HE HAS MADE NO EFFORT TO REPAY THE REMAINING \$4.00. PERRAULT'S POSITION UP TO THE TIME OF HIS RECALL TO THE WITNESS BOX WAS QUITE DIFFERENT. HE WOULD NOT DENY THAT MARSHALL OWED HIM THE \$5.00 BUT TOOK THE POSITION THAT HE DID NOT KNOW WHETHER HE WAS OR WAS NOT OWED THE MONEY. HE ADMITTED THAT AT THE TIME THE LOAN WAS SUPPOSED TO HAVE TAKEN PLACE THEY WERE DRINKING IN A BEVERAGE ROOM. WHEN HE WAS RECALLED TO GIVE EVIDENCE HIS ANSWERS WERE: "I CAN'T REMEMBER" - "I DON'T THINK I DID" - "I CAN REMEMBER NOW" - "I DIDN'T LEND HIM \$5.00". YET ON THE NIGHT HE SIGNED THE CARD HE COULD NOT REMEMBER AGREEING TO ALLOW MARSHALL TO DEDUCT THE DOLLAR FROM THE \$5.00 WHICH MARSHALL SAID HE OWED HIM. IT IS CLEAR, HOWEVER, FROM THE TESTIMONY OF OTHERS THAT THIS CONVERSATION DID TAKE PLACE. PERRAULT HAD ALSO BEEN DRINKING THAT EVENING. TAKING INTO ACCOUNT ALL THESE MATTERS, WE FIND AS A FACT THAT MARSHALL DID OWE PERRAULT \$5.00 AT THE TIME PERRAULT SIGNED AND THAT PERRAULT'S CARD IS THEREFORE NOT IN DOUBT.

IN EXAMINING THE CARRIERE INCIDENT, WE MUST ALSO LOOK AT THE SPILCHEN CASE SINCE THE COLLECTOR IN EACH WAS THE SAME PERSONS, NAMELY, JOHN LEVESQUE. THERE IS A DIRECT CONFLICT BETWEEN SPILCHEN AND LEVESQUE, PARTICULARLY WITH RESPECT TO THE TIME WHEN AND THE CIRCUMSTANCES UNDER WHICH THE DOLLAR WAS PAID TO LEVESQUE. IN THE CARRIERE INCIDENT THERE IS RELATIVELY LITTLE CONFLICT BETWEEN LEVESQUE AND THE OTHER WITNESSES SAVE PERHAPS FOR A STATEMENT WHICH LEVESQUE IS ALLEGED TO HAVE MADE ON THE TELEPHONE TO CARRIERE A WEEK OR SO BEFORE THE HEARING TO WHICH THEY HAD BEEN SUMMONED. ON CONSIDERING THE EVIDENCE IN BOTH INCIDENTS, WE ACCEPT THE EVIDENCE OF LEVESQUE WHERE IT CONFLICTS WITH THAT OF THE OTHER WITNESSES. LEVESQUE, IN OUR JUDGMENT, WAS A RELIABLE WITNESS WHOSE TESTIMONY WAS CAREFULLY GIVEN AND WITH CONVICTION.

SPILCHEN'S EVIDENCE, PARTICULARLY WITH REFERENCE TO THE PAYMENT OF THE DOLLAR TO LEVESQUE, DOES NOT RING TRUE. WE FIND IT DIFFICULT TO BELIEVE THAT, UNASKED AS HE CLAIMS, HE WOULD HAND OVER A DOLLAR TO LEVESQUE WITHOUT SAYING ANYTHING AND SIMPLY BECAUSE HE WAS SORRY FOR HIM AND DID NOT WANT HIM TO BE OUT A DOLLAR. IT IS ALSO CURIOUS THAT, IF THIS TOOK PLACE, SPILCHEN WOULD NOT HAVE REVEALED THIS TO THE BOARD'S INVESTIGATOR OR EVEN TO THE INTERVENER WHEN HE SIGNED ITS FORMS.

CARRIERE'S TESTIMONY WAS FAR FROM SATISFACTORY. HE WAS OBVIOUSLY RELUCTANT TO TESTIFY OR TO GIVE DETAILS. HE REFUSED TO SIGN THE BOARD'S INVESTIGATION FORM OR A FORM USED BY STEEL IN ITS INVESTIGATIONS. STATEMENTS MADE PRIOR TO THE HEARING CHANGED UNDER OATH; STATEMENTS MADE AT THE HEARING, UNDER FURTHER QUESTIONING, WERE SHOWN TO BE HALF-TRUTHS. FURTHERMORE, ALTHOUGH CARRIERE CLAIMS THAT ON THE DAY HE TESTIFIED HE REPAYED A DOLLAR TO LACHAPPELLE, WHO HAD ORIGINALLY PUT UP THE MONEY WHEN CARRIERE SIGNED THE MEMBERSHIP CARD, HAVING REGARD TO THE DIFFERENT VERSIONS ABOUT THIS SUPPOSED REPAYMENT GIVEN BY CARRIERE AND LACHAPPELLE, WE ARE NOT PREPARED TO FIND THAT ANY SUCH REPAYMENT WAS IN FACT MADE. THERE IS THEREFORE NO REASON TO DOUBT LEVESQUE'S EVIDENCE THAT HE DID NOT SEE ANY PAYMENT MADE ON THAT DAY. AGAIN, CARRIERE'S CLAIM THAT LEVESQUE CALLED HIM ABOUT A WEEK BEFORE THE HEARING AND TOLD HIM TO SAY THAT LACHAPPELLE

HAD PUT UP THE MONEY, WHICH CLAIM IS DENIED BY LEVESQUE, DOES NOT CARRY CONVICTION BECAUSE CARRIERE HAD ADMITTEDLY BEEN SAYING THIS WAS SO, LONG BEFORE THE TELEPHONE CALL WAS MADE. FINALLY, THERE WAS NO ATTEMPT BY LEVESQUE TO CONCEAL THE FACT THAT LACHAPPELLE AND NOT CARRIERE HAD PAID THE MONEY TO HIM. THE HANDING OF THE RECEIPT BY LEVESQUE TO CARRIERE SOME DAYS AFTER CARRIERE SIGNED IS ENTIRELY CONSISTENT WITH THE UNDOUBTED FACT THAT LACHAPPELLE SAID HE WOULD PAY FOR CARRIERE BUT DID NOT HAVE ANY MONEY WITH HIM AND WITH THE CLAIM BY LEVESQUE THAT LACHAPPELLE DID IN FACT PAY IT TO HIM AT A LATER TIME.

IN CONCLUSION, THEN, WE FIND THAT SPILCHEN PAID LEVESQUE A DOLLAR IN SUPPORT OF HIS MINE MILL APPLICATION CARD AND THAT LEVESQUE RECEIVED A DOLLAR FROM LACHAPPELLE ON BEHALF OF CARRIERE'S APPLICATION CARD. HOWEVER, IN CARRIERE'S CASE, WE ALSO FIND THAT AT THE TIME CARRIERE SIGNED HIS CARD HE HAD NO INTENTION OF PAYING THE DOLLAR BACK TO LACHAPPELLE AND THAT THIS FACT WAS KNOWN TO LEVESQUE. WE FIND, FURTHER, THAT CARRIERE DID NOT PAY THE DOLLAR TO LACHAPPELLE. CARRIERE HAD KNOWN LACHAPPELLE FOR SOME SIX MONTHS BEFORE THE SIGN-UP WHICH WAS ON APRIL 29TH, 1965. LEVESQUE HAD KNOWN BOTH CARRIERE AND LACHAPPELLE PRIOR TO THIS DATE. IN FACT, HE WAS THEIR STOPE BOSS. LACHAPPELLE WAS NOT AN ORGANIZER AND DID NOT ASSIST LEVESQUE ON ANY OTHER OCCASION. LEVESQUE, AN EMPLOYEE OF INCO AND A COUNCIL ORGANIZER, NEVER HELD ANY MINE MILL OFFICE. HE ESTIMATED HE SIGNED UP 15 PERSONS, BUT ONLY 13 CARDS WERE SUBMITTED BEARING HIS SIGNATURE AS COLLECTOR.

IN SUMMING UP OUR FINDINGS UNDER THE INTERVENER'S CATEGORY OF "UNUSUAL LOANS" TO WHICH WE HAVE ADDED ONE OTHER INCIDENT, NAMELY, THAT OF SPILCHEN, WE FIND THAT THERE IS NOTHING WRONG WITH THE SPILCHEN, PERRAULT OR FLYNN CARDS BUT THAT IN THE CASE OF CARRIERE, THERE WAS NO FINANCIAL SACRIFICE MADE OR INTENDED TO BE MADE BY CARRIERE AND THIS WAS KNOWN TO THE COLLECTOR, ALTHOUGH MONEY WAS PAID TO THE COLLECTOR BY A THIRD PARTY.

CATEGORY 4

WE TURN NOW TO THE INTERVENER'S CATEGORY TERMED "DOUBTFUL CARDS". THE FIRST OF THESE INVOLVES ATTILIO COUVRE. WE FIND IT VERY DIFFICULT TO PIECE TOGETHER ANY COHERENT STORY FROM COUVRE'S EVIDENCE OTHER THAN THAT HE INTENDED TO JOIN THE APPLICANT AND HE PAID THE COLLECTOR, DEVEAU, A DOLLAR. UNDOUBTEDLY COUVRE, WHO GAVE HIS EVIDENCE THROUGH AN INTERPRETER, AND DEVEAU HAD CONSIDERABLE DIFFICULTY IN COMMUNICATING WITH ONE ANOTHER. HOWEVER, BOTH AGREE THAT ALTHOUGH DEVEAU WROTE COUVRE'S NAME ON THE CARD, THIS WAS DONE WITH COUVRE'S CONSENT AND FURTHER THAT COUVRE'S HAND WAS ON THE INSTRUMENT USED BY DEVEAU. THE DIFFERENT REASONS GIVEN BY COUVRE AND DEVEAU AS TO WHY COUVRE'S HAND WAS ON THAT INSTRUMENT MAY WELL BE ACCOUNTED FOR BY THE DIFFICULTIES OF COMMUNICATION. COUVRE TESTIFIED HE COULD WRITE A LITTLE IN ITALIAN BUT NOT AT ALL IN ENGLISH. HE COULD, HOWEVER, SIGN HIS NAME. COUNSEL FOR THE INTERVENER SEEKS TO ATTACH SIGNIFICANCE TO THE FACT THAT COUVRE STATED THAT WHEN HIS HAND WAS GUIDED IT WAS WITH A PEN AND DEVEAU, THE COLLECTOR, SAID HE USED A PENCIL. BUT EVEN HERE THERE IS CONFUSION BECAUSE UNDER CROSS-EXAMINATION BY COUNSEL FOR THE APPLICANT THE QUESTION WAS PUT AND THEN REPEATED, "WHEN COUVRE'S HAND WAS ON THE PENCIL WAS IT THERE TOGETHER WITH DEVEAU'S HAND?" AND THE WITNESS ANSWERED "YES".

WE DO NOT FOR A MOMENT SUGGEST THAT COUVRE WAS IN ANY WAY ATTEMPTING TO BE ANYTHING BUT AN HONEST WITNESS. HIS CONFUSION MAY HAVE COME ABOUT FROM LAPSE OF TIME OR HIS INABILITY TO UNDERSTAND THE INTERPRETER OR THE INTERPRETER'S INABILITY TO UNDERSTAND THE WITNESS OR FROM A COMBINATION OF ALL THREE. HOWEVER, HAVING REGARD TO THE STATE OF HIS EVIDENCE AS CONTRASTED WITH THE CLEAR EVIDENCE OF DEVEAU, UNSHAKEN AS IT WAS IN CROSS-EXAMINATION, WE ARE NOT PREPARED TO FIND ANYTHING WRONG WITH THIS CARD OR TO FIND, AS SUGGESTED BY THE INTERVENER, THAT THERE WAS ANYTHING THAT REQUIRED EXPLANATION OR SHOULD HAVE BEEN DIVULGED TO THE BOARD.

THE ONLY QUESTION IN THE NEXT CASE IN THIS CATEGORY, THAT INVOLVING CAMERON, IS "WHEN WAS THE CARD SIGNED?" HAVING REGARD TO ALL THE EVIDENCE, INCLUDING THAT OF THE WITNESS DUGGAN, WE ARE SATISFIED THE CARD WAS SIGNED ON THE DATE IT BEARS, NAMELY, MAY 23RD, 1964. FURTHERMORE, WHEN COMPARING THE HAND-WRITING ON THE CARD WITH THE SPECIMENS TAKEN AT THE HEARING, WE ARE SATISFIED THAT DANIS, THE COLLECTOR, WROTE IN THE FIGURES "64" AND "1964" ON THE CARD. WE FIND THAT THIS IS A GOOD CARD AND THAT THERE IS NOTHING IN THIS TRANSACTION WHICH REQUIRES ANY EXPLANATION OR SUGGESTS ANY LACK OF FRANKNESS TO THE BOARD.

THE LAST CASE IN THIS CATEGORY CONCERNS THE CARD OF H. LALONDE. IT IS CLEAR FROM THE EVIDENCE THAT THE CARD WAS SIGNED IN JUNE 1964, AND FURTHER, THAT AT THE TIME THE CARD WAS HANDED IN TO THE APPLICANT BY THE COLLECTOR, O'BRIEN, THERE WAS NOTHING WRONG WITH THE CARD OTHER THAN, PERHAPS, THE FACT THAT THE CARD PORTION CONTAINED NO DATE. IT IS ALSO CLEAR, HOWEVER, THAT SOME TIME AFTER APRIL, 1965 WHEN THE APPLICANT COMMENCED PHOTOSTATING ITS CARDS, SOME UNKNOWN PERSON ADDED THE DATE "JUNE 3RD, 1965" TO THE CARD AND WROTE A "5" OVER THE FIGURE "4" ON THE RECEIPT PORTION OF THE CARD SO AS TO MAKE THE DATES ON THE CARD AND RECEIPT COINCIDE. NO EXPLANATION OF THIS WAS ADVANCED BY THE APPLICANT. ON THE OTHER HAND, IT SEEMS UNLIKELY THAT WHOEVER MADE THE CHANGES WAS MOTIVATED BY AN ATTEMPT TO MISLEAD THE BOARD BECAUSE THE DATE INSERTED WAS A MOST UNLIKELY ONE, THAT IS, A DATE IN THE FUTURE, AND, FURTHER, THERE WAS NO ATTEMPT TO CONCEAL THE CHANGES.

CATEGORY 5

THE NEXT CATEGORY SUGGESTED BY COUNSEL FOR THE INTERVENER IS THAT OF "DISPUTED NON-PAYS". INTO THIS CATEGORY HE PLACED 10 CARDS, INCLUDING THOSE FOR FLYNN AND SPILCHEN WHICH WE HAVE ALREADY CONSIDERED. THE FIRST CARD IN THIS CATEGORY CONCERNED ONE, FLETCHER. THE COLLECTOR, BOYD, WAS ALSO THE COLLECTOR IN THE KILLIN INCIDENT AND WE PROPOSE TO DEAL WITH THE TWO CARDS TOGETHER. IN THE CASE OF FLETCHER, THERE IS A DIRECT CONFLICT OF TESTIMONY. FLETCHER SAID HE NEVER PAID BOYD ANY MONEY. BOYD DENIED THIS AND HIS TESTIMONY WAS SUPPORTED BY FOX. IN THE CASE OF KILLIN, THE CONFLICT IS NOT QUITE SO APPARENT. KILLIN MAINTAINED HE NEVER PAID BOYD ANY MONEY BUT SIGNED WHEN A THIRD PERSON BRENNAN, HANDED BOYD THE DOLLAR. BOYD HAD NO RECOLLECTION OF THE SPECIFIC DETAILS AND THIS IS QUITE UNDERSTANDABLE, HAVING REGARD TO THE FACT THAT HE SIGNED UP 50 OR 60 PERSONS AND THAT ON THIS PARTICULAR OCCASION HE WAS ATTEMPTING TO SIGN UP A NUMBER OF STRANGERS IN DIFFERENT ROOMS IN A BUNKHOUSE. BOYD, HAVING NO SPECIFIC RECOLLECTION OF THE EVENT, RELIED ON HIS PRACTICE OF NOT ISSUING A RECEIPT UNTIL THE DOLLAR WAS PAID.

WE WERE NOT IMPRESSED WITH FLETCHER AS A WITNESS. HIS DEMEANOUR IN THE WITNESS BOX LEFT MUCH TO BE DESIRED. HIS TESTIMONY, APART FROM THE KEY QUESTION AS TO WHETHER HE PAID THE DOLLAR, CONTAINS DISCREPANCIES AND SOME RATHER UNBELIEVABLE ASSERTIONS. THUS, FOR EXAMPLE, HIS STATEMENT THAT HE SIGNED FOR BAR PRIVILEGES WE CANNOT ACCEPT IN THE LIGHT OF THE LENGTHY DISCUSSIONS OVER WELFARE PLANS WHICH HE FREELY ADMITTED TOOK PLACE. AGAIN, HIS STATEMENTS ABOUT THE DRINKING THAT TOOK PLACE ARE DIFFICULT TO ACCEPT, HAVING REGARD TO THE FACT THAT THE BAR WAS CLOSED - A FACT WHICH, INCIDENTALLY, HE DID NOT REMEMBER UNTIL HE WAS RECALLED TO GIVE FURTHER EVIDENCE. AGAIN, HE CONTRADICTED HIMSELF BY SAYING IN ONE PLACE THAT AFTER HE SIGNED HE STAYED FOR THE DANCE AND IN ANOTHER THAT AFTER HE SIGNED HE "TOOK OFF". IN CONTRAST, THE EVIDENCE OF BOYD AND FOX WAS CONSISTENT AND CLEAR-CUT, AND THEIR ACCOUNT OF WHAT OCCURRED IS MORE CREDIBLE THAN THAT GIVEN BY FLETCHER.

IN THE KILLIN INCIDENT THE ONLY QUESTION REALLY IS, "DID BRENNAN HAND THE DOLLAR TO BOYD?" THERE SEEMS NO REASON TO DOUBT THAT BOYD RECEIVED A DOLLAR. AT THE TIME OF THE SIGN-UP KILLIN AND BRENNAN WERE CELEBRATING THE LATTER'S BIRTHDAY AND DURING THE COURSE OF THE EVENING A CONSIDERABLE QUANTITY OF LIQUOR WAS CONSUMED. IN FACT, BRENNAN HAD NO RECOLLECTION OF THE SIGN-UP AND SO COULD NEITHER CONFIRM OR DENY KILLIN'S STORY. BOYD REMEMBERED SEEING BRENNAN IN THE BUNKHOUSE BUT DENIED THAT BRENNAN GAVE HIM A DOLLAR. BOYD PUT IT THIS WAY: "I WOULD REMEMBER IF HE GAVE ME A DOLLAR." HAVING SEEN AND HEARD MR. BRENNAN, WE WOULD BE INCLINED TO AGREE AND ESPECIALLY IF BRENNAN WAS IN A JOVIAL MOOD AT THE TIME. KILLIN WAS SOMEWHAT LESS THAN FRANK DURING THE EARLIER PART OF HIS TESTIMONY. IT WAS NOT UNTIL BRENNAN GAVE EVIDENCE THAT WE LEARNED THAT KILLIN HAD BEEN HELPING BRENNAN TO CELEBRATE HIS BIRTHDAY. WHILE HE MAINTAINED THAT HE REMEMBERED CLEARLY THE EARLY PART OF THE EVENING WHEN THE SIGN-UP TOOK PLACE, HE ADMITTED THAT HE RECALLED NOTHING AFTER 11:00 O'CLOCK AND THAT HE DID NOT GO TO WORK THE NEXT MORNING BECAUSE OF A HANGOVER. UNQUESTIONABLY A PARTY WAS GOING ON WHEN BOYD CAME INTO THE ROOM IN THE BUNKHOUSE WHERE THE SIGN-UP TOOK PLACE. THERE WERE PERSONS OTHER THAN KILLIN, BRENNAN AND BOYD IN THE ROOM AND, AS THE EVIDENCE INDICATES, OTHERS WERE GOING AND COMING. BOYD DID NOT PARTICIPATE IN THE PARTY, HAVING ONE DRINK ONLY AND REFUSING THE OFFER OF OTHERS. HAVING REGARD TO ALL OF THE CIRCUMSTANCES SET OUT ABOVE, WE ACCEPT THE EVIDENCE OF BOYD IN PREFERENCE TO THAT OF FLETCHER OR KILLIN. WE THEREFORE FIND THE FLETCHER CARD TO BE A GOOD CARD. WHILE IT MAY BE THAT KILLIN GOT A DOLLAR FROM BRENNAN TO PAY BOYD, WE ARE NOT PREPARED TO FIND THAT BOYD HAD KNOWLEDGE OF ANY SUCH TRANSACTION.

THE NEXT CARD TO BE CONSIDERED IS THAT OF JEANVEAU. ONCE AGAIN THERE IS A CONFLICT OF EVIDENCE, JEANVEAU DENYING THAT HE PAID AND THE COLLECTOR, GAVAN, ASSERTING THAT HE WAS PAID BY JEANVEAU. JEANVEAU, AN EMPLOYEE OF TWO WEEKS ONLY BUT A PREVIOUS ACQUAINTANCE OF GAVAN'S, TESTIFIED THAT HE SIGNED UP AROUND THE END OF JANUARY. HE TOLD GAVAN HE DID NOT HAVE THE MONEY BUT WOULD PAY HIM THE FOLLOWING WEEK. ACCORDING TO JEANVEAU, GAVAN MADE SEVERAL EFFORTS TO COLLECT THE DOLLAR BUT STOPPED ASKING FOR IT IN FEBRUARY. THERE WAS NOTHING IN THE EVIDENCE OF JEANVEAU OR IN HIS DEMEANOUR IN THE WITNESS BOX WHICH WOULD LEAD US TO INFER THAT HE WAS NOT TELLING THE TRUTH. GAVAN GAVE WHAT, ON THE SURFACE, WAS A PRETTY DETAILED ACCOUNT OF WHAT HAPPENED AND WHY HE REMEMBERED, BUT HIS STORY FELL APART IN SOME PLACES. HE REFUSED TO BUDGE FROM HIS STATE-

MENT THAT JEANVEAU WAS SIGNED UP ON JANUARY 27TH, 1965, THE DATE ON THE CARD. BOTH AGREED THE SIGNING UP TOOK PLACE AT WORK, YET NEITHER WORKED ON JANUARY 27TH. AGAIN, GAVAN STATED HE FILLED IN THE DATE ON THE RECEIPT (FEBRUARY 2ND, 1965) WHEN HE TURNED THE CARD IN. HE REMEMBERED THAT DAY BECAUSE HE HAD TO WALK HOME FROM THE MINE MILL OFFICE IN A SNOW STORM. HOWEVER, IT WAS AGREED BY THE APPLICANT AND INTERVIEWER THAT THERE WAS NO PRECIPITATION THAT DAY. WE HAVE CAREFULLY EXAMINED EXHIBIT 12 (THE NOTEBOOK IN WHICH GAVAN KEPT NOTES ON THE PERSONS HE SIGNED UP) AND WHILE IT IS POSSIBLE HE MAY HAVE MISREAD HIS OWN NOTES, IN THE FACE OF HIS OWN POSITIVE STATEMENTS, WE ARE UNABLE TO GIVE HIM THE BENEFIT OF THAT DOUBT. IN THE CIRCUMSTANCES WE MUST FIND THAT JEANVEAU DID NOT PAY ANY MONEY TO GAVAN, AND FURTHER, THAT GAVAN, FOLLOWING THE SIGN-UP, MADE SEVERAL UNSUCCESSFUL ATTEMPTS TO COLLECT THE DOLLAR. GAVAN WAS A VOLUNTARY ORGANIZER WHO ESTIMATED THAT HE SIGNED UP SEVEN PERSONS. FIVE CARDS (2 OF WHICH WERE "LOST" CARDS) WERE SUBMITTED BEARING HIS SIGNATURE AS COLLECTOR. HE HAS NOT HELD ANY OFFICE IN THE UNION AND RECEIVED NO EXPENSE MONEY. HE IS AN EMPLOYEE OF INCO.

WE NOW TURN OUR ATTENTION TO TWO CARDS INVOLVING McNAMARA AS THE COLLECTOR. IN THE FIRST OF THESE TURNER, THE EMPLOYEE, CLAIMED THAT HE WAS SIGNED UP UNDERGROUND AND DID NOT PAY BECAUSE HIS MONEY WAS IN HIS LOCKER. McNAMARA APPROACHED HIM FOR THE MONEY SEVERAL TIMES, BUT ALWAYS UNDERGROUND, NEVER WHEN HE WAS ON THE SURFACE. McNAMARA, A VOLUNTARY ORGANIZER WHO SIGNED UP SOME 70 OR 80 PERSONS, HAD NO SPECIFIC RECALL OF THIS PARTICULAR INCIDENT, WHICH TOOK PLACE IN JUNE, 1964. HE RELIED ON HIS PRACTICE OF NOT GIVING A RECEIPT UNTIL HE HAD RECEIVED THE MONEY IN ORDER TO REFUTE TURNER'S CLAIM.

IN THE CASE OF G. A. MUNRO WE HAVE A SOMEWHAT DIFFERENT SITUATION. MUNRO CLAIMED HE SIGNED THE CARD BUT DID NOT PAY THE DOLLAR. McNAMARA WAS EQUALLY INSISTENT THAT THE DOLLAR WAS PAID AND ON THIS OCCASION HE MAINTAINED THAT HE REMEMBERED THE INCIDENT CLEARLY AND WAS NOT RELYING SOLELY ON HIS PRACTICE. MUNRO DID NOT IMPRESS US AS A WITNESS AND HIS EVIDENCE WAS FAR FROM SATISFACTORY. HE FIRST TOLD THE BOARD THAT HE WAS SIGNED UP SHORTLY AFTER HE STARTED TO WORK ON FEBRUARY 28TH, 1965 AND THAT HE GOT HIS RECEIPT THAT DAY. THE QUESTION OF MONEY WAS NOT DISCUSSED WHEN HE SIGNED THE CARD AND GOT HIS RECEIPT, BUT WAS BROUGHT UP SOME THREE DAYS LATER, A STATEMENT WE FIND DIFFICULT TO ACCEPT. HOWEVER, ACCORDING TO MUNRO, HE TOLD McNAMARA HE COULD NOT PAY UNTIL AFTER HIS FIRST FULL PAY WHICH WOULD BE ON MARCH 15TH. THIS COULD NOT POSSIBLY BE TRUE BECAUSE THE CARD AND RECEIPT ARE DATED MARCH 16TH. FACED WITH THIS, MUNRO THEN CHANGED HIS STORY TO SAY HE DID NOT SIGN BEFORE MARCH 16TH WHICH, IF TRUE, DESTROYS THE REASON HE GAVE McNAMARA FOR NOT PAYING. HE THEN TRIED TO EXPLAIN THIS AWAY BY SAYING HE MEANT HIS NEXT PAY. IN ADDITION, THERE WERE OBVIOUS DISCREPANCIES BETWEEN HIS TESTIMONY AND EARLIER STATEMENTS MADE TO THE INTERVIEWER. IN CONTRAST TO THIS, McNAMARA'S ACCOUNT WAS ENTIRELY CONSISTENT WITH THE DATE ON THE CARD AND RECEIPT AND WITH THE DATE WHEN MUNRO RECEIVED HIS FIRST FULL PAY, THAT IS, MARCH 15TH. MOREOVER, HIS ANSWERS UNDER CROSS-EXAMINATION BY COUNSEL FOR THE INTERVIEWER WERE CONVINCING. THUS, FOR EXAMPLE, HE REMEMBERED THIS INCIDENT BECAUSE MUNRO WAS SIGNED UP IN McNAMARA'S HOME. MOREOVER, HE HAD PREVIOUSLY LOANED MUNRO MONEY WHILE

THE LATTER WAS WAITING TO SEE IF THE RESPONDENT WAS GOING TO HIRE HIM AND, BECAUSE OF THIS, McNAMARA FOUND IT NECESSARY TO EXPLAIN TO MUNRO THAT HE COULD NOT LEND HIM MONEY.

IN CONSIDERING TURNER'S CREDIBILITY WE HAVE NOTED TWO MATTERS IN PARTICULAR. WE FIND IT DIFFICULT TO BELIEVE THAT IF, AS CLAIMED BY TURNER, HE HAD PROMISED TO PAY LATER, McNAMARA WOULD ONLY HAVE SOUGHT TURNER OUT UNDERGROUND. A NUMBER OF WITNESSES HAVE TESTIFIED IT WAS NOT THEIR PRACTICE TO CARRY MONEY WHEN UNDERGROUND. McNAMARA'S TESTIMONY, WHICH WE ACCEPT, IS THAT WHERE MEN DID NOT PAY HE MADE IT HIS PRACTICE TO ASCERTAIN THEIR CLOCK NUMBERS AND THEN CHECK WITH THEM AS THEY PUNCHED OUT. IN THE SECOND PLACE, WE REJECT OUTRIGHT TURNER'S EXCUSE (THAT HE DID NOT KNOW THE DAY) FOR FAILING TO APPEAR BEFORE THE BOARD ALTHOUGH PROPERLY SERVED WITH A SUMMONS. ON THE OTHER HAND, OUR IMPRESSION OF McNAMARA THROUGHOUT ALL OF HIS TESTIMONY IS THAT HE WAS A TRUTHFUL WITNESS. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, WE FIND THAT BOTH MUNRO AND TURNER PAID THEIR DOLLARS TO McNAMARA.

IN THE NEXT CASE, THE EMPLOYEE, VAILLANCOURT, TESTIFIED THAT WHILE HE SIGNED THE CARD AND RECEIPT ON APRIL 16, 1965, HE COULD NOT PAY THE DOLLAR AT THAT TIME BECAUSE HE HAD JUST STARTED WORK. L. LALONDE, THE COLLECTOR, TOLD HIM THAT WHEN HE PAID HE WOULD GIVE HIM THE RECEIPT. HE DID NOT PAY LATER NOR WAS HE ASKED TO PAY BY LALONDE. HE NEVER GOT A RECEIPT. LALONDE DID NOT RECALL VAILLANCOURT NOR THE TRANSACTION IN QUESTION, EXCEPT THAT HE REMEMBERED THE CARD WAS ONE OF A NUMBER OF CARDS SIGNED UP IN A BUNKHOUSE. LALONDE WAS CERTAIN THAT THE MONEY WAS PAID BECAUSE HIS PRACTICE WAS NOT TO PUT IN A CARD UNTIL HE RECEIVED PAYMENT. HE WOULD NOT GET A PERSON TO SIGN THE RECEIPT, NOR WOULD HE HIMSELF SIGN IT, UNTIL THE MONEY WAS PAID AND, AS THE CARD WENT THROUGH, VAILLANCOURT MUST HAVE PAID.

VAILLANCOURT'S EVIDENCE WAS CLEAR-CUT AND UNSHAKEN IN CROSS-EXAMINATION, AND WE HAVE NO REASON TO DOUBT HIS TESTIMONY. AS OPPOSED TO THIS, WE HAVE THE COLLECTOR UNABLE TO RECALL THE TRANSACTION AND HAVING TO RELY ON HIS PRACTICE. UNLIKE SOME OTHER INCIDENTS WHERE WE HAD ADDITIONAL FACTORS WHICH SWUNG THE PENDULUM IN FAVOUR OF PRACTICE, THERE IS NOTHING OF THAT SORT HERE. IN THESE CIRCUMSTANCES, WE MUST FIND THAT VAILLANCOURT DID NOT PAY ANY MONEY ON HIS OWN BEHALF. LALONDE WAS AN EMPLOYEE OF INCO AT THE TIME HE WAS SIGNING UP MEMBERS FOR MINE MILL. HE WAS A VOLUNTARY ORGANIZER AND HAD NOT HELD OFFICE IN THE APPLICANT UNION. HE STATED THAT HE SIGNED UP BETWEEN 20 AND 30 PERSONS, WAS PAID SOME EXPENSE MONEY FOR BUS FARE AND MEALS, BUT WAS NOT PAID FOR ANY TIME OFF. THERE WERE 24 CARDS SUBMITTED BEARING HIS SIGNATURE AS COLLECTOR, 4 OF THE CARDS BEING "LOST" CARDS.

THE NEXT CASE TO BE CONSIDERED IS THAT OF BEAULIEU WHO TESTIFIED THAT HE SIGNED THE CARD AT HIS HOME ON SATURDAY, MAY 22ND, 1965 BUT THOUGH REQUESTED BY THE COLLECTOR, CRIBBS, TO PAY ON SUBSEQUENT OCCASIONS, DID NOT DO SO. ONE OF THESE OCCASIONS, HE CLAIMED, WAS AT AN IGA STORE APPROXIMATELY A WEEK AFTER HE SIGNED THE CARD, ALTHOUGH, ACCORDING TO BEAULIEU, IT WAS NOT ON A SATURDAY. BOTH THE CARD AND RECEIPT ARE DATED MAY 22ND, 1965. BEAULIEU COULD NOT SAY IF THE DATES WERE INSERTED BY CRIBBS ON THE CARD AFTER BEAULIEU SIGNED BECAUSE AFTER SIGNING HE GAVE THE CARD TO CRIBBS WHO FILLED SOMETHING IN ON THE CARD AND KEPT IT. HE DID NOT RECALL PUTTING THE DATES IN AND SAID THAT "THEY DO NOT APPEAR TO BE IN MY HANDWRITING". BEAULIEU ADMITTED RECEIVING A

REGISTERED LETTER (ABOUT WHICH MORE WILL BE SAID LATER IN THIS DECISION) FROM MINE MILL. HE CLAIMED HE GOT IT A WEEK OR TWO AFTER THE IGA MEETING WITH CRIBBS.

CRIBBS AGREED THAT WHEN HE SIGNED UP BEAULIEU THE LATTER DID NOT PAY AND THEREFORE, ACCORDING TO CRIBBS, HE DID NOT PUT IN THE DATES ON THE CARD AND RECEIPT. HE WENT ON TO SAY THAT ON SATURDAY, THE 22ND OF MAY, HE RECEIVED A DOLLAR FROM BEAULIEU ON THE MAIN STREET IN CONISTON BETWEEN THE BANK AND THE IGA STORE WHERE BEAULIEU'S CAR WAS PARKED. HE FURTHER TESTIFIED THAT THE DATES ON THE CARD AND RECEIPT WERE IN HIS HANDWRITING. THIS TESTIMONY WITH RESPECT TO THE TIME, DATE AND LOCATION OF THE MEETING BETWEEN BEAULIEU AND CRIBBS IS CORROBORATED BY ANOTHER WITNESS, HENRY, WHO ALSO CORROBORATED, IN THE MAIN, CRIBB'S TESTIMONY WITH RESPECT TO THE PAYMENT OF THE DOLLAR. IT IS CLEAR THAT THE DATES ON THE CARD AND RECEIPT ARE IN CRIBB'S HANDWRITING. IT IS ALSO CLEAR THAT BEAULIEU'S TESTIMONY WITH RESPECT TO HIS VERSION OF THE TIMETABLE OF EVENTS CANNOT STAND SINCE IT WOULD PUT THE RECEIPT OF THE REGISTERED LETTER BY BEAULIEU WELL INTO JUNE, DESPITE THE FACT THAT THE LETTER WAS DATED AND MAILED ON MAY 28TH. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, WE ACCEPT CRIBB'S EVIDENCE WHERE IT DIFFERS FROM THAT OF BEAULIEU AND FIND THAT A DOLLAR WAS PAID BY BEAULIEU TO CRIBBS AND THE CARD IS ACCORDINGLY A GOOD CARD.

THE LAST CASE IN THE CATEGORY OF "DISPUTED NON-PAYS" CONCERNED JAMES CLOSS. ALTOGETHER APART FROM THE RANGER COLLECTION FUND INCIDENT (OF WHICH MORE BELOW) HIS EVIDENCE WAS CONFUSING. THUS, FOR EXAMPLE, HIS "FINAL" TIME-TABLE OF EVENTS APPEARED TO BE AS FOLLOWS: HE COMMENCED WORK ON OCTOBER 4TH, 1964. SOME 10 DAYS LATER HE SIGNED THE MINE MILL CARD IN QUESTION. TWO WEEKS AFTER THIS HE WAS GIVEN A RECEIPT BY LANDRY, THE COLLECTOR, WHICH RECEIPT HE SIGNED ALTHOUGH UP TO THIS POINT NO MONEY HAD CHANGED HANDS. A WEEK LATER (AT FIRST HE PUT IT AS A MONTH LATER) HE SIGNED HIS NAME TO A LIST BEING CIRCULATED BY LANDRY IN WHICH HE PLEDGED TO CONTRIBUTE A DOLLAR TO A FUND BEING RAISED FOR ONE, RENE RANGER, AN EMPLOYEE HURT IN AN AUTOMOBILE ACCIDENT. SOME EIGHT SHIFTS LATER HE PAID A DOLLAR TO LANDRY, NOT FOR THE MINE MILL CARD, ACCORDING TO CLOSS, BUT IN FULFILMENT OF HIS PLEDGE RESPECTING RANGER. THE CARD AND RECEIPT ARE BOTH DATED OCTOBER 20TH, 1964 AND THE DATES ARE NOT IN CLOSS'S HANDWRITING. ALTHOUGH HE ADMITTED THAT IT WAS POSSIBLE THAT HE SIGNED THE RECEIPT ON OCTOBER 20TH, THIS STILL DOES NOT FIT IN WITH THE FACT THAT THE RANGER LIST OF PLEDGES, WHICH THE WITNESS WHITMORE SIGNED AND WHICH CLOSS CLAIMED TO HAVE SIGNED, WAS DATED OCTOBER 16TH AND WAS IN FACT SIGNED BY WHITMORE ON THAT DATE. MOREOVER, WE FIND IT VERY DIFFICULT TO BELIEVE CLOSS'S CLAIM THAT TWO WEEKS AFTER HE SIGNED THE CARD, HE SIGNED, AND WAS GIVEN, A RECEIPT ALTHOUGH HE DID NOT PAY. LANDRY WAS SUPPOSED TO HAVE SAID TO HIM ON THIS OCCASION THAT HE COULD PAY LATER AND THEN LANDRY WOULD TURN THE CARD IN. WHEN CLOSS FIRST SIGNED THE CARD, LANDRY WAS ALLEGED TO HAVE SAID TO HIM THAT IF HE DID NOT PAY, THE CARD WOULD BE TORN UP. AS WE SAID ABOVE, THIS ASPECT OF HIS EVIDENCE STRIKES US AS A MOST UNLIKELY STORY AND WHEN VIEWED ALONG WITH HIS TIME-TABLE OF EVENTS WOULD, AT THE VERY LEAST, RAISE SOME DOUBTS IN OUR MINDS.

ON THE OTHER HAND, CLOSS'S CLAIM, THAT THE DOLLAR WAS HANDED TO LANDRY AS HIS PLEDGE TO THE RANGER FUND BUT THAT LANDRY SAID HE WOULD APPLY IT INSTEAD TO THE MINE MILL CARD, WAS CORROBORATED BY WHITMORE. NOW THERE ARE CERTAIN DISCREPANCIES BETWEEN CLOSS'S AND WHITMORE'S EVIDENCE. THUS FOR EXAMPLE, ACCORDING TO CLOSS WHEN HE HANDED THE DOLLAR TO LANDRY AND LANDRY SAID

HE WOULD APPLY IT TO THE MINE MILL CARD, CLOSS SAID "I DIDN'T SAY ANYTHING TO LANDRY EXCEPT THAT 'IT'S NOT FOR THAT PURPOSE.'" THERE IS NO SUGGESTION BY CLOSS THAT THERE WAS ANY FURTHER DISCUSSION BETWEEN HIMSELF AND LANDRY. WHITMORE TESTIFIED THAT WHILE IN THE SHOWER HE OVERHEARD CLOSS SAY TO LANDRY, "HERE'S THE DOLLAR FOR THE COLLECTION" AND LANDRY'S REPLY THAT HE WOULD PUT IT ON THE MINE MILL CARD. WHITMORE THEN WENT ON TO SAY THAT HE COULD NOT MAKE OUT ANY FURTHER CONVERSATION OTHER THAN THAT THEY WERE ARGUING WHILE WALKING AWAY TOWARDS THE GATE. AGAIN, WHITMORE RELATED ANOTHER CONVERSATION WHICH HE CLAIMED TO HAVE OVERHEARD IN WHICH CLOSS ASKED LANDRY TO DESTROY HIS CARD. CLOSS, IN HIS TESTIMONY, MADE NO REFERENCE TO ANY SUCH INCIDENT, A SOMEWHAT SURPRISING OMISSION IF IT IN FACT TOOK PLACE.

APART FROM THESE DISCREPANCIES, HOWEVER, AND GIVING CLOSS THE BENEFIT OF THE DOUBT ON THE DATES SINCE THE TRANSACTION TOOK PLACE SOME TIME AGO, WE MIGHT HAVE BEEN DISPOSED TO ACCEPT CLOSS'S EVIDENCE AS OPPOSED TO LANDRY'S CLAIM THAT CLOSS SIGNED UP UNDERGROUND, PAID THE DOLLAR THE SAME NIGHT WHEN THEY CAME TO THE SURFACE AND WAS GIVEN HIS RECEIPT THE NEXT DAY, WERE IT NOT FOR ONE INCONTROVERTIBLE FACT. CLOSS DID NOT SIGN THE PLEDGE LIST FOR THE RANGER FUND. WHITMORE SIGNED, BUT CLOSS DID NOT. LANDRY TESTIFIED THAT CLOSS REFUSED TO SIGN, SAYING THAT HE HAD JUST STARTED WORK AND DID NOT KNOW RANGER. WHATEVER ELSE THIS MAY DO TO CLOSS'S TESTIMONY, IT DESTROYS THE FOUNDATION FOR HIS CLAIM THAT HE GAVE A DOLLAR TO LANDRY FOR THE RANGER FUND. IN ALL THE CIRCUMSTANCES THEREFORE, WE ACCEPT THE TESTIMONY OF LANDRY AND FIND THAT THERE IS NOTHING WRONG WITH THE CLOSS CARD.

BY WAY OF SUMMARY, THEN, OF THE EIGHT CARDS IN THE DISPUTED NON-PAY CATEGORY, WE FIND ONLY TWO, THOSE OF JEANVEAU AND VAILLANCOURT, TO BE NON-PAYS. IN BOTH CASES THE COLLECTORS ADVANCED THE MONEY AS A LOAN. ONE ATTEMPTED TO RECOVER IT, UNSUCCESSFULLY, THE OTHER DID NOT. BOTH COLLECTORS WERE EMPLOYEES OF INCO AND VOLUNTARY ORGANIZERS FOR MINE MILL IN WHICH NEITHER HAVE HELD OFFICE. ONE RECEIVED EXPENSE MONEY, THE OTHER DID NOT. IN ONE CASE THE LOAN WAS TO A STRANGER, IN THE OTHER TO A PREVIOUS ACQUAINTANCE. IN ONE OTHER CASE, THAT INVOLVING KILLIN, THERE IS A POSSIBLE INSTANCE OF NO FINANCIAL SACRIFICE, A FACT WHICH WE ARE NOT PREPARED TO FIND WAS KNOWN TO THE COLLECTOR.

CATEGORY 6

THE LAST CATEGORY OF CARDS TO BE CONSIDERED IS THAT INVOLVING THE COLLECTOR, WILFRED GIRARD. THERE WERE SIX INCIDENTS IN THIS CATEGORY, THREE OF WHICH, NAMELY GODIN, BROOKS AND GIGNAC, ALSO INVOLVED WILFRED GIRARD'S BROTHER, DAVID. WE INTEND TO START WITH THE TRANSACTIONS INVOLVING THE BROTHERS GIRARD.

IT IS NOT WITHOUT SIGNIFICANCE THAT THE THREE CARDS INVOLVED WERE ALL SIGNED UP JUST A FEW DAYS PRIOR TO THE DATE THE APPLICATION WAS MADE TO THE BOARD, THAT IS, MAY 11TH, 1965. GODIN WAS SIGNED ON MAY 5TH, GIGNAC ON MAY 6TH, AND BROOKS ON MAY 9TH. IT HAS BEEN THE BOARD'S EXPERIENCE IN THE PAST THAT CORNERS ARE APT TO BE CUT AT SUCH A TIME (SEE CANADIAN WESTINGHOUSE COMPANY LIMITED, (1954) CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1949-1954, ¶17,089 AT P. 13,161; C.L.S. 76-461). FURTHER, IN ALL THREE CASES THE EMPLOYEE WHOM WILFRED GIRARD WAS ATTEMPTING TO SIGN SAID HE HAD NO MONEY. IN ALL THREE CASES, ACCORDING TO BOTH WILFRED AND DAVID GIRARD, THE DOLLAR WAS PUT UP BY DAVID. GODIN DENIED THIS AND SAID WILFRED GIRARD TOOK

MONEY FROM HIS OWN POCKET, ASKED HIS BROTHER, DAVID, TO GO OUT AND GET CHANGE AND, HAVING RECEIVED THE CHANGE, THEN HANDED GODIN A DOLLAR. GODIN GAVE IT BACK TO WILFRED. MRS. GODIN WHO WAS PRESENT CORROBORATED HER HUSBAND'S VERSION. IN THE BROOKS'S CASE THERE IS NOTHING TO SUGGEST THAT THE MONEY DID NOT COME FROM DAVID GIRARD BECAUSE EVEN ON BROOKS'S VERSION OF WHAT HAPPENDED, WILFRED WENT BACK TO HIS BROTHER DAVID'S HOUSE TO GET THE DOLLAR FROM HIS BROTHER AND TOLD BROOKS HE COULD REPAY DAVID. IN THE GIGNAC CASE ALL THREE AGREED THE MONEY CAME FROM DAVID ALTHOUGH IN AN EARLIER STATEMENT TO ONE OF THE BOARD'S INVESTIGATORS WHICH HE HAD TROUBLE EXPLAINING AWAY, GIGNAC SAID THAT WILFRED GIRARD PUT UP THE MONEY HIMSELF.

IN ALL THREE CASES WHILE THE THREE BORROWERS AGREED TO REPAY, NO DEFINITE ARRANGEMENTS OF ANY KIND WERE MADE ABOUT PAYMENT AND NO TIME LIMITS SET. IT WAS ON THE BASIS OF "YOU CAN PAY ME WHEN YOU GET IT OR WHEN YOU SEE ME" AND THIS EVEN IN THE CASE OF GODIN, WHO WAS A STRANGER TO THE GIRARDS. IN TWO CASES NO ATTEMPT WAS MADE TO COLLECT THE DOLLAR UNTIL JUST BEFORE THE PARTICULAR BOARD HEARING AT WHICH THE CASE WAS TO BE HEARD. IN GODIN'S CASE NO EFFORT AT ALL WAS MADE BY EITHER OF THE GIRARDS TO COLLECT. DAVID GIRARD TESTIFIED HE PROBABLY WOULD NOT HAVE RECOGNIZED GODIN AGAIN. DAVID GOT HIS DOLLAR BACK FROM BROOKS JUST TWO DAYS BEFORE THE HEARING, WHICH WOULD MAKE IT AROUND JULY 13TH, AND THIS DESPITE THE FACT THAT BROOKS LIVED ACROSS THE STREET FROM DAVID GIRARD. SIMILARLY, IN THE CASE OF GIGNAC, IF THE MONEY WAS REPAYED AT ALL, (AND THERE IS CONSIDERABLE DOUBT ABOUT THIS, HAVING REGARD TO THE DIFFERENT VERSIONS GIVEN BY GIGNAC AND DAVID GIRARD AS TO THE DETAILS OF THE REPAYMENT) IT WAS NOT PAID UNTIL AUGUST 1ST, ACCORDING TO DAVID GIRARD, OR DURING THE LAST WEEK OF JULY, ACCORDING TO GIGNAC. AGAIN, IN NONE OF THE THREE CASES DID WILFRED GIRARD EVER INQUIRE OF HIS BROTHER DAVID WHETHER THE LATTER HAD BEEN REPAYED.

ASSUMING FOR THE MOMENT THAT IN ALL THREE CASES DAVID DID MAKE THE LOAN, THERE ARE STILL PORTIONS OF THE TESTIMONY OF THE GIRARDS WHICH WE FIND DIFFICULT TO ACCEPT. FOR EXAMPLE, WILFRED GIRARD WOULD HAVE US BELIEVE THAT HE DID NOT KNOW WHY BROOKS WANTED TO SEE HIS BROTHER DAVID, DESPITE THE FACT THAT HE KNEW BROOKS WAS BROKE AND WOULD HAVE TO BORROW, AND WHEN HE CAME BACK AFTER HIS BROTHER HAD BEEN TO BROOKS'S HOME, THERE WAS A DOLLAR ON THE TABLE. ACCORDING TO DAVID, THE LATTER TOLD WILFRED THAT BROOKS WANTED MONEY, BUT WILFRED SAYS IN CROSS-EXAMINATION THAT HE DID NOT KNOW OF THE "POSSIBILITY OF BORROWING". IN THE GIGNAC INCIDENT IT IS DIFFICULT TO ACCEPT WILFRED'S EVIDENCE THAT HE DID NOT KNOW WHERE HIS BROTHER WAS. ALTHOUGH GIGNAC'S EVIDENCE WAS EVASIVE IN THE EXTREME, HE CLEARLY KNEW WHERE DAVID WAS AND THERE IS NO DOUBT IN OUR MINDS THAT WILFRED KNEW TOO. FURTHER, ACCORDING TO BOTH GIGNAC AND WILFRED, GIGNAC TOLD WILFRED HE WAS GOING TO BORROW FROM "DAVE". YET WILFRED TESTIFIED THAT WHEN GIGNAC RETURNED WITH THE DOLLAR "IT NEVER ENTERED HIS MIND WHERE IT CAME FROM". DAVID GIRARD ADMITTED KNOWING THE PURPOSE OF THE LOAN IN THE GODIN CASE ALTHOUGH AT A LATER HEARING HE SAID IN A GENERAL STATEMENT, "I DIDN'T LEND FOR CARDS" - "I DIDN'T KNOW". AGAIN HE DENIED KNOWING THAT WILFRED WAS ATTEMPTING TO SIGN UP BROOKS. HE COULD NOT RECALL IF BROOKS TOLD HIM WHY HE WANTED TO BORROW A DOLLAR. IN THE GIGNAC CASE HE DENIED KNOWING WHY GIGNAC WANTED THE DOLLAR OR THAT WILFRED WAS ATTEMPTING TO SIGN UP GIGNAC. THIS WE CANNOT ACCEPT. ON WILFRED'S OWN TESTIMONY, BOTH WERE OUT CAMPAIGNING THAT DAY AND WILFRED HIMSELF SAYS THAT HIS BROTHER WOULD KNOW WHY HE WANTED TO SEE GIGNAC. THESE EVASIONS AND DENIALS ARE DIFFICULT TO UNDERSTAND IN THE LIGHT OF WILFRED GIRARD'S TESTIMONY IN THE GODIN CASE (THE FIRST OF THE THREE "BROTHER TRANSACTIONS" HEARD BY THE BOARD) TO THE EFFECT THAT HE KNEW HE COULD NOT MAKE THE LOAN BUT SAW NOTHING WRONG WITH HIS BROTHER ADVANCING THE MONEY.

IN SUM, THEN, IF WE ASSUME IN ALL THREE CASES THAT A LOAN WAS MADE BY DAVID GIRARD, WE WOULD HAVE NO HESITATION IN FINDING THAT WHEN THE EMPLOYEE SAID HE DID NOT HAVE THE MONEY, WILFRED SUGGESTED HE BORROW FROM DAVID AND DAVID WILLINGLY PUT UP THE MONEY WITHOUT ANY SERIOUS INTENTION AT THE TIME OF TRYING TO RECOVER THE DOLLAR.

IN HIS EARLIER TESTIMONY DAVID GIRARD ADMITTED TO ONLY TWO LOANS, GODIN AND BROOKS, AND TO ONE OTHER (NOT GIGNAC'S) WHICH HE CLAIMS WAS PAID BACK. ON HIS SECOND APPEARANCE IN THE WITNESS BOX HE ADMITTED TO THREE OR FOUR, PLUS AN ADDITIONAL ONE THAT WAS NEVER REPAID. WHEN ASKED IF WILFRED HAD EVER MADE A LOAN ON A CARD HE, DAVID, WAS SIGNING UP, HIS ANSWER WAS, "THERE COULD BE ONE. I DON'T REMEMBER". IN REFLECTING ON THESE DENIALS, EVASIONS AND CHANGES IN TESTIMONY OF THE GIRARDS, IT IS APPARENT THAT WHEN CREDIBILITY IS IN ISSUE, LITTLE WEIGHT CAN BE ATTACHED TO THEIR TESTIMONY.

WE HAVE PROCEEDED ON THE ASSUMPTION THAT LOANS WERE MADE IN ALL THREE CASES BY DAVID GIRARD. WAS THIS SO IN THE GODIN CASE? WE CAN SEE NO REASON WHY THE GODINS WOULD LIE ON THIS QUESTION. ON THE OTHER HAND, WILFRED ADMITTED HE KNEW HE COULD NOT MAKE THE LOAN HIMSELF AND IT WOULD THEREFORE BE TO HIS ADVANTAGE, AT LEAST IN HIS OWN MIND, TO MAKE IT APPEAR THAT THE LOAN WAS FROM DAVID. IN ALL THE CIRCUMSTANCES AND HAVING REGARD TO OUR OTHER FINDINGS WITH RESPECT TO THE CREDIBILITY OF THE GIRARDS, WE ACCEPT THE GODIN VERSION OF WHAT HAPPENED - THAT IS, THAT THE MONEY WAS WILFRED GIRARD'S AND THAT AFTER THE BILL WAS CHANGED WILFRED HANDED GODIN A DOLLAR, WHO IN TURN HANDED IT BACK TO WILFRED. WHILE THERE IS SOME DOUBT IN OUR MINDS ABOUT THE GIGNAC INCIDENT, WE ARE NOT ENTITLED TO USE GIGNAC'S PRIOR INCONSISTENT STATEMENT TO PROVE THE TRUTH OF THE MATTER STATED AND SO WE ARE TREATING THIS INCIDENT AS A LOAN MADE BY DAVID AND NOT WILFRED BUT, AS WE FOUND ABOVE, WITH KNOWLEDGE ON THE PART OF BOTH BROTHERS.

WE TURN NOW TO THE OTHER THREE INCIDENTS INVOLVING WILFRED GIRARD. IN THE FIRST OF THESE, THE JOHNSON CASE, THERE IS A DIRECT CONFLICT BETWEEN JOHNSON AND GIRARD AS TO WHETHER THE DOLLAR WAS PAID. JOHNSON MET GIRARD FOR THE FIRST TIME ON APRIL 21ST, 1965, A WEDNESDAY, THE DAY HE SIGNED THE MINE MILL APPLICATION CARD AND RECEIPT. HE TOLD GIRARD HE WOULD NOT BE PAID UNTIL MONDAY AND IT WAS AGREED GIRARD WOULD COME TO JOHNSON'S HOUSE TO COLLECT. JOHNSON TESTIFIED HE NEVER SAW WILFRED GIRARD AGAIN. GIRARD MAINTAINED HE CALLED SEVERAL TIMES BUT EITHER NO ONE WAS AT HOME OR JOHNSON WAS NOT AT HOME. FINALLY, ACCORDING TO GIRARD, IT WAS GETTING VERY CLOSE TO THE DATE OF THE APPLICATION, ONLY ONE OR TWO DAYS BEFORE, SO HE GOT HOLD OF ONE, CAMPBELL, WHO DROVE HIM TO JOHNSON'S HOUSE. JOHNSON CAME TO THE DOOR AND PAID THE DOLLAR AND GIRARD GAVE HIM A RECEIPT. ON BEING RECALLED TO THE STAND, JOHNSON MOST EMPHATICALLY DENIED THIS. CAMPBELL WAS NOT CALLED AS A WITNESS AND NO REASON WAS GIVEN AS TO WHY HE WAS NOT PRODUCED. JOHNSON WAS RELATIVELY UNSHAKEN IN CROSS-EXAMINATION AND WE HAVE NO REASON FOR DOUBTING HIS EVIDENCE. IN THE CIRCUMSTANCES AND HAVING REGARD TO OUR EARLIER FINDINGS ON CREDIBILITY, WE FIND THAT JOHNSON DID NOT PAY THE DOLLAR, ALTHOUGH WILLING TO DO SO.

IN THE SECOND INCIDENT, WE HAVE AN ENTIRELY DIFFERENT SITUATION. A CARD WAS SUBMITTED FOR ONE, JOHN GUDZ. THE CARD BORE GUDZ'S EMPLOYMENT NUMBER AND ADDRESS. IT WAS NOT SIGNED BY GUDZ BUT BY SOMEONE ELSE. IT IS CLEAR THAT WHOEVER WROTE THE WORDS "JOHN GUDZ" ON THE CARD AND RECEIPT WAS NOT ATTEMPTING TO SIMULATE GUDZ'S SIGNATURE. GUDZ TESTIFIED THAT HE HAD NEVER BEEN APPROACHED BY GIRARD TO SIGN. HE KNEW GIRARD, HAVING WORKED WITH HIM IN 1952. GIRARD THOUGHT IT WAS EARLIER THAN 1952 BUT WENT ON TO SAY HE HAD KNOWN GUDZ ONLY AS "JOHN". HE DID NOT KNOW HIS LAST NAME. THE CARD BEARS THE DATE

APRIL 21ST, 1965, AND ACCORDING TO GIRARD WAS ONE OF EIGHT OR NINE SIGNED UP THAT DAY IN A BANK. APRIL 21ST WAS A TUESDAY AND IT WAS THEREFORE A REGULAR PAY-DAY FOR THE RESPONDENT'S EMPLOYEES. ALTHOUGH HANDWRITING SPECIMENS OF GIRARD WERE TAKEN, NO EVIDENCE WAS CALLED TO SUGGEST THAT GIRARD WROTE THE WORD "JOHN GUDZ" ON THE CARD AND RECEIPT AND, AFTER EXAMINING THE SPECIMENS FILED, ARE SATISFIED THAT GIRARD DID NOT DO SO. WHILE WE HAVE NOT BEEN IMPRESSED WITH GIRARD'S CREDIBILITY, WE ARE NOT PREPARED TO FIND ON THE EVIDENCE BEFORE US THAT GIRARD SUBMITTED THE CARD KNOWING THAT IT WAS NOT SIGNED BY JOHN GUDZ. ON THE OTHER HAND, ONCE GIRARD FOUND OUT THAT HE HAD BEEN DUPED, HE MADE NO SERIOUS ATTEMPT TO DISCOVER THE CULPRIT.

THE FINAL INCIDENT IN THE GIRARD SERIES IS A DISTURBING ONE. IT CONCERNS ON THE ONE HAND CHARTRAND, WHO WAS ALLOWED TO RETURN TO THE WITNESS STAND TO CONFESS THAT HE HAD LIED ON HIS FIRST APPEARANCE BEFORE THE BOARD, AND ON THE OTHER HAND WILFRED GIRARD, WHOSE EVIDENCE THE BOARD HAS FOUND UNRELIABLE IN SEVERAL OTHER CASES. WE DO NOT DEEM IT NECESSARY TO CONSIDER THIS CASE FURTHER IN VIEW OF FINDINGS RESPECTING GIRARD WHICH WILL BE SET OUT LATER IN THE DECISION.

OUR CONCLUSIONS RESPECTING THE GIRARD CATEGORY ARE AS FOLLOWS: ONE CARD (GODIN'S) WHERE WILFRED GIRARD LOANED MONEY TO AN EMPLOYEE AND WAS NOT REPAID AND DID NOT ATTEMPT TO COLLECT; ONE CARD (JOHNSON'S) WHERE WILFRED GIRARD FAILED TO COLLECT A DOLLAR ALTHOUGH IT HAD BEEN PROMISED; ONE CARD (GUDZ) NOT SIGNED BY THE PERSON WHOSE SIGNATURE IT PURPORTED TO BE, ALTHOUGH NOT TO THE KNOWLEDGE OF GIRARD; TWO CARDS (BROOKS AND GIGNAC) WHERE DAVID GIRARD, WITH THE KNOWLEDGE OF AND AT THE SUGGESTION OF HIS BROTHER WILFRED, ADVANCED THE DOLLAR, KNOWING THE PURPOSE FOR WHICH IT WAS TO BE USED BUT WITHOUT ANY SERIOUS INTENTION OF SECURING REPAYMENT. IF IN FACT IN SOME WAY OR ANOTHER THE DOLLAR IN THE GODIN CASE WAS ACTUALLY PUT UP BY DAVID, THE GODIN CARD WOULD THEN BE IN THE SAME CATEGORY AS THE BROOKS AND GIGNAC CARDS. IN ADDITION TO THE ABOVE, IT SEEMS CLEAR THAT THERE WERE OTHER CASES OF LOANS BY DAVID GIRARD, AND IN THE REVERSE SITUATION, QUITE LIKELY ONE BY WILFRED FOR ONE OF DAVID'S CARDS.

WILFRED GIRARD, AN EMPLOYEE OF THE RESPONDENT, WAS A VOLUNTARY ORGANIZER WHO RECEIVED \$250 TO \$300 FOR EXPENSES INCURRED AS AN ORGANIZER OVER A PERIOD OF A YEAR. HE HAS NEVER HELD ANY ELECTED OR APPOINTED OFFICE WITH THE APPLICANT. SOME YEARS AGO HE TOOK A LEAVE OF ABSENCE FROM THE RESPONDENT AND ACTED AS A PAID ORGANIZER FOR THE APPLICANT UNION ON A CAMPAIGN INVOLVING ANOTHER EMPLOYER. OUR COUNT SHOWS 108 CARDS WERE SUBMITTED BEARING WILFRED GIRARD'S SIGNATURE AS A COLLECTOR, 7 OF WHICH WERE "LOST" CARDS AND 3 OF WHICH WERE WITHDRAWN BY THE APPLICANT AFTER THEY HAD BEEN FILED WITH THE BOARD. DAVID GIRARD, AN EMPLOYEE OF THE RESPONDENT, WAS A VOLUNTARY ORGANIZER WHO GOT EXPENSES FOR GAS AND MEALS OVER THE LAST TWO MONTHS OF THE CAMPAIGN. HE HAS NEVER HELD OFFICE IN THE APPLICANT UNION. ABOUT A YEAR AGO WHILE ON A HOLIDAY IN NEW BRUNSWICK HE WORKED OVER A PERIOD OF FROM TWO TO THREE WEEKS AS AN ORGANIZER FOR THE PARENT UNION OF THE APPLICANT. HE WAS NOT PAID ANY SALARY BUT DID RECEIVE EXPENSES FOR HIS HOTEL, MEALS AND TRANSPORTATION. SIXTY-NINE CARDS BEARING HIS SIGNATURE AS COLLECTOR WERE FILED WITH THIS APPLICATION BY MINE MILL. TWO OF THE 69 CARDS WERE "LOST" CARDS.

THIS COMPLETES OUR ANALYSIS OF THE EVIDENCE AND FINDINGS THEREON WITH RESPECT TO 33 OF THE CARDS AS TO WHICH WE HEARD EVIDENCE AND ARGUMENT. FOR PURPOSES OF THE RECORD, HOWEVER, WE POINT OUT THAT WE HEARD EVIDENCE RESPECTING A CARD FOR ONE, LOISELLE, AS TO WHICH NO REPRESENTATIONS WERE MADE AND IT IS OUR

FINDING THAT THIS IS A GOOD CARD. FURTHER, NO REPRESENTATIONS WERE MADE ON THE KULEBA CARD. IT WILL BE RECALLED THAT NO EVIDENCE WAS HEARD RESPECTING THIS CARD BECAUSE OF MR. KULEBA'S UNTIMELY DEATH. HIS STATEMENT TO THE BOARD'S EXAMINER WAS READ OUT TO THE PARTIES AT ONE OF THE HEARINGS. AT THAT TIME THE INTERVENER STATED THAT IT WOULD SERVE NO USEFUL PURPOSE TO CALL THE COLLECTOR. IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE CONTENTS OF THE EXAMINER'S REPORT WE FIND THE KULEBA CARD TO BE IN ORDER.

SUMMARY OF FINDINGS

IT IS CONVENIENT AT THIS POINT TO SUMMARIZE BRIEFLY THE IRREGULARITIES WE HAVE FOUND TO EXIST AMONG THE 34 QUESTIONED CARDS. THE DATES ON ONE CARD WERE CHANGED AFTER THE CARD WAS TURNED IN TO MINE MILL BY THE COLLECTOR. ONE CARD WAS SIGNED BY A PERSON, UNKNOWN, OTHER THAN THE PERSON WHOSE SIGNATURE IT PURPORTED TO BE. THERE WERE 10 CASES OF UNRECOVERED LOANS BY COLLECTORS, 2 OF WHOM LOANED ON 2 OCCASIONS. THERE WERE 5 INCIDENTS OF LOANS OR GIFTS BY THIRD PARTIES WITH THE COLLECTOR IN 3 CASES HAVING KNOWLEDGE OF THE FACTS. THE TOTAL NUMBER OF CARDS INVOLVED IS 17. IT IS POINTED OUT THAT THESE 17 CARDS REPRESENT THE ONLY CARDS WHICH, ON THE EVIDENCE BEFORE US, HAVE BEEN FOUND TO CONTAIN IRREGULARITIES OUT OF ALL THOSE WHICH THE CHALLENGED BY THE INTERVENER AND, IN ADDITION, OUT OF THOSE WHICH THE BOARD ITSELF QUESTIONED.

MINE MILL ORGANIZATIONAL CAMPAIGN

BEFORE PROCEEDING TO A CONSIDERATION OF WHAT CONSEQUENCES OUGHT TO FLOW FROM OUR FINDINGS SET OUT ABOVE, IT IS NECESSARY TO DESCRIBE CERTAIN FEATURES OF THE ORGANIZATIONAL CAMPAIGN CONDUCTED BY MINE MILL. THE CAMPAIGN BEGAN IN MAY, 1964 AND CONTINUED UNTIL MAY, 1965. IT SHOULD PERHAPS BE EXPLAINED THAT EVIDENCE OF MEMBERSHIP MORE THAN SIX MONTHS BUT LESS THAN A YEAR OLD IS ACCEPTED BY THE BOARD AS SUFFICIENT TO WARRANT THE ORDERING OF A REPRESENTATION VOTE BUT NOT TO THE GRANTING OF OUTRIGHT CERTIFICATION. THE UNCHALLENGED EVIDENCE BEFORE US IS THAT 725 VOLUNTARY ORGANIZERS PARTICIPATED IN THE CAMPAIGN OF WHOM 516 ACTUALLY PROCURED CARDS AS COLLECTORS. IN ADDITION, 7 NATIONAL ORGANIZERS AND 2 OFFICERS OF THE APPLICANT WERE ENGAGED IN SIGNING UP EMPLOYEES AS MEMBERS, BUT THE TOTAL NUMBER OF CARDS WHICH THEY OBTAINED WOULD NOT EXCEED 200. SOME 9 OTHER MEMBERS OF THE APPLICANT'S STAFF ALSO PARTICIPATED IN THE CAMPAIGN BUT NOT AS ACTIVE ORGANIZERS. THE VOLUNTARY ORGANIZERS WERE EITHER PEOPLE WHO VOLUNTEERED FOR THE TASK OR ELSE WERE PERSUADED TO ACT. IN ADDITION TO THE ABOVE, TOWARD THE END OF THE CAMPAIGN, ANOTHER 109 PERSONS WERE ENLISTED AS ORGANIZERS AND THEY, OR SOME OF THEM, SIGNED UP FROM 1 TO 3 CARDS.

ORGANIZATION KITS CONSISTING, APPARENTLY, OF A SMALL NOTE BOOK AND WRITTEN INSTRUCTIONS, WERE ISSUED TO THE VOLUNTARY ORGANIZERS. IN ADDITION, THESE ORGANIZERS WERE INDIVIDUALLY BRIEFED AS TO THE PROPER PROCEDURES IN SIGNING UP EMPLOYEES AS MEMBERS. FURTHER INSTRUCTION WAS GIVEN FROM TIME TO TIME AT ORGANIZATIONAL MEETINGS. WHEN A VOLUNTARY ORGANIZER OBTAINED CARDS FROM MINE MILL, CAREFUL NOTE WAS MADE OF THE CARD NUMBERS AND HE SIGNED FOR THEM. AS CARDS WERE TURNED IN, THE NUMBERS OF THEM WERE RECORDED AND THE PERSON TURNING THEM IN SIGNED THE PAGE WHERE THE INFORMATION WAS RECORDED. THERE IS NO QUESTION THAT THE ORGANIZERS INVOLVED IN THE CAMPAIGN WERE PERSONS APPROVED BY MINE MILL.

TOWARDS THE LATTER PART OF THE CAMPAIGN THE APPLICANT "IN ORDER TO MAKE SURE THAT ALL WAS CORRECT" CAUSED TO BE SENT OUT A TOTAL OF 8,052 REGISTERED

LETTERS TO PERSONS WHO ITS RECORDS, INCLUDING PHOTOSTATIC COPIES OF CARDS FILED WITH THE BOARD, SHOWED WERE MEMBERS. THE LETTER, ON THE STATIONERY OF THE APPLICANT WAS IN THE FOLLOWING TERMS:

OUR RECORDS INDICATE THAT YOU ARE AN EMPLOYEE OF INTERNATIONAL NICKEL COMPANY OF CANADA AND HAVE WITHIN THE LAST TWELVE MONTHS SIGNED AN APPLICATION FOR MEMBERSHIP IN THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA) AND PAID ONE DOLLAR TO COMPLY WITH THE REQUIREMENTS OF THE ONTARIO LABOUR RELATIONS BOARD.

UNLESS WE HEAR FROM YOU WITHIN SEVEN DAYS FROM THE DATE OF MAILING OF THIS REGISTERED LETTER, WE WILL ASSUME THAT OUR RECORDS ARE CORRECT.

FOR YOUR CONVENIENCE, WE ARE ENCLOSING A STAMPED SELF-ADDRESSED ENVELOPE.

THERE IS, OF COURSE, NO NEED TO REPLY IF YOU AGREE THAT THE RECORDS ARE CORRECT.

FRATERNALLY YOURS,

"J. B. TESTER"
FINANCIAL SECRETARY,
LOCAL 598.

ENCL.

THE APPLICANT DID NOT SEND LETTERS TO PERSONS FOR WHOM IT FILED CERTIFICATES OF MEMBERSHIP BUT THE EVIDENCE IS THAT ALL BUT 29 OF THE 7,713 PERSONS FOR WHOM IT FILED APPLICATION CARDS AND RECEIPTS WERE SENT REGISTERED LETTERS. OF THIS 29, 23 WERE NOT SENT LETTERS BECAUSE OF A LACK OF A PROPER ADDRESS, AND THE OTHER 6 WERE OVERLOOKED FOR ONE REASON OR ANOTHER.

THE APPLICANT OBVIOUSLY ATTEMPTED TO MAKE EVERY EFFORT TO ENSURE THAT ALL PERSONS SHOWN ON ITS RECORDS AS MEMBERS AND FOR WHOM IT HAD FILED CARDS RECEIVED THE LETTER. THUS, WHERE REGISTERED LETTERS WERE RETURNED MARKED "UNCLAIMED", IT SENT LETTERS BACK FIRST CLASS MAIL RATHER THAN REGISTERED, SO AS TO GET OVER THE POSSIBILITY OF AN INTENDED RECIPIENT DELIBERATELY REFUSING TO ACCEPT REGISTERED MAIL. IT MAILED 234 SUCH LETTERS OF WHICH 47 WERE RETURNED THE SECOND TIME. MOST OF THE REGISTERED LETTERS (7,791) WERE SENT BETWEEN MAY 4TH, 1965 AND MAY 28TH, 1965, (THE TERMINAL DATE FOR THE APPLICATION WAS MAY 25TH, 1965). AFTER ACQUIRING ADDITIONAL INFORMATION ABOUT CHANGES IN ADDRESSES AND FOLLOWING A COMPLETE RECHECK OF ITS RECORDS, A FURTHER 261 REGISTERED LETTERS WERE MAILED OUT ON JUNE 7TH, 8TH AND 9TH BY MINE MILL. FINALLY, THE EVIDENCE IS THAT EVEN PERSONS SIGNED UP AT THE VERY END OF THE CAMPAIGN WERE SENT LETTERS BECAUSE, AS WAS POINTED OUT, THE APPLICANT HAD UNTIL THE FIRST HEARING, NAMELY JUNE 15TH, TO ASK THE BOARD TO WITHDRAW PREVIOUSLY FILED EVIDENCE. AS THE SECOND COUNT WILL SHOW, CARDS WERE WITHDRAWN AS LATE AS JUNE 10TH. IT WOULD APPEAR THAT IN ADDITION TO THE 234 LETTERS RETURNED MARKED "UNCLAIMED", 412 CAME BACK MARKED "CHANGE OF ADDRESS" OR "UNKNOWN". AS A RESULT OF REPLIES RECEIVED, WHICH INCLUDED 1 CLAIM OF NON-SIGN AND 6 OF NON-PAY, AND, AFTER FURTHER INVESTIGATION, SEVERAL CARDS FILED WITH THE BOARD WERE WITHDRAWN. THE TOTAL NUMBER OF CARDS WITHDRAWN BY THE APPLICANT WAS 20 BUT ON THE EVIDENCE BEFORE US WE ARE UNABLE TO SAY HOW MANY

OF THESE WERE WITHDRAWN AS A RESULT OF REPLIES RECEIVED TO THE MINE MILL LETTERS AND HOW MANY FOR OTHER REASONS.

THE APPLICANT SUBMITTED AN ANALYSIS (EXHIBIT 48E) OF ITS REGISTERED LETTER CAMPAIGN IN RELATION TO THE 34 CARDS DEALT WITH EARLIER BY THE BOARD. LEAVING ASIDE THE CARD FOR LALONDE, WHICH INVOLVED AN ALTERATION IN DATES AFTER BEING HANDED IN BY THE COLLECTOR, THE RESULT OF THAT ANALYSIS AS IT APPLIES TO THE REMAINING 16 CARDS FOUND TO BE IN QUESTION BY THE BOARD FOLLOWS. IN THE CASE OF THE NON-SIGN, A LETTER WAS SENT TO GUDZ AND NO REPLY RECEIVED. GUDZ ADMITTED RECEIPT OF THE LETTER AND SAID HE DID NOT ANSWER IT. IN THE 10 CASES OF LOANS BY COLLECTORS, 8 LETTERS WERE MAILED TO WHICH NO REPLY WAS RECEIVED, ONE LETTER WAS RETURNED BECAUSE THE RECIPIENT REFUSED TO ACCEPT IT, AND ONE PERSON WAS NOT SENT A LETTER BECAUSE OF A SLIP-UP IN THE MINE MILL OFFICE. IN THE 5 CASES OF LOANS BY THIRD PARTIES, LETTERS WERE SENT TO 4 BUT NOT TO THE FIFTH BECAUSE THE ADDRESS ON THE CARD WAS INCOMPLETE. OF THE 4 SENT, 2 FAILED TO REPLY AND 2 REFUSED TO ACCEPT THE LETTERS. THE BOARD HEARD EVIDENCE FROM THE 15 PERSONS TO WHOM LOANS WERE MADE, RESPECTING THE RECEIPT BY THEM OF THE MINE MILL LETTERS AND WHAT ACTION THEY TOOK IN CONNECTION THEREWITH. THAT EVIDENCE CONTAINED NO SUBSTANTIAL DIFFERENCES FROM THE ANALYSIS PRESENTED TO THE BOARD BY THE APPLICANT IN EXHIBIT 48E.

THERE IS ONE OTHER MATTER ARISING OUT OF THE ANALYSIS WHICH MUST NOT BE OVERLOOKED. THE APPLICANT RECEIVED 3 REPLIES FROM THE 34 PERSONS WHOSE CARDS WERE BEING INVESTIGATED BY THE BOARD. TWO OF THE PERSONS (FLETCHER AND SPILCHEN) STATED THAT THEY HAD NOT PAID THE DOLLAR. AFTER INVESTIGATING THE CARDS, THE APPLICANT PERMITTED THEM TO STAND. THE BOARD HAS FOUND THAT THE CARDS IN QUESTION ARE GOOD CARDS. THE THIRD REPLY INDICATED THAT THE PERSON IN QUESTION (PHILLIPS) WISHED TO REVOKE HIS CARD. THIS CARD WAS ALSO PERMITTED TO STAND, AND QUITE PROPERLY SO, IN VIEW OF THE BOARD'S POLICIES CONCERNING REVOCATIONS. SUBSEQUENTLY AN ALLEGATION OF NON-PAY WAS MADE RESPECTING THIS THIRD CARD AND WE HAVE FOUND THAT THERE WAS NOTHING WRONG WITH THE CARD.

ARGUMENTS OF APPLICANT AND INTERVENER

THIS COMPLETES OUR REVIEW AND ANALYSIS OF THE EVIDENCE BEFORE THE BOARD, AND WE TURN NOW TO A CONSIDERATION OF WHAT CONSEQUENCES SHOULD FOLLOW FROM OUR FINDINGS. THE ARGUMENTS OF COUNSEL FOR THE APPLICANT AND INTERVENER (COUNSEL FOR THE RESPONDENT MADE NO SUBMISSION TO THE BOARD ON THIS ASPECT OF THE CASE) INDICATE A BASIC DIVERGENCE OF OPINION ON THE QUESTION OF THE POLICIES APPLICABLE TO A CASE OF THIS KIND. BRIEFLY STATED, THE APPLICANT'S POSITION IS THAT THERE IS NO EVIDENCE TO IMPLICATE ANY OFFICER OR RESPONSIBLE OFFICIAL OF THE APPLICANT IN ANY OF THE IRREGULARITIES WHICH MAY HAVE OCCURRED, NOR IS THERE ANY EVIDENCE THAT ANY OFFICER OR OFFICIAL HAD KNOWLEDGE OF ANY IRREGULARITIES. IF IRREGULARITIES OCCURRED, THEY WERE THE ACTS OF RANK-AND-FILE MEMBERS OR EMPLOYEES ONLY AND, ON THE BASIS OF THE WEBSTER AIR EQUIPMENT CASE, (1958) C.C.H. CANADIAN LAW REPORTS, TRANSFER BINDER '55-159, ¶16,110, C.L.S. 76-598, THE APPLICANT IS NOT AS SUCH RESPONSIBLE IN THE ABSENCE OF NOTICE OF IRREGULARITIES, OR ALTERNATIVELY, OF A WIDESPREAD PATTERN OF IRREGULARITY. IN A CASE INVOLVING SO MANY EMPLOYEES, CARDS AND ORGANIZERS, IT IS INEVITABLE, SO THE ARGUMENT GOES, THAT IRREGULARITIES WILL OCCUR. THE APPLICANT TOOK ACTIVE STEPS TO SEEK OUT ANY MISTAKES THAT MAY HAVE OCCURRED AND, WHEN IT FOUND THEM, WITHDREW THE CARDS. IT WAS HAMPERED IN THIS RESPECT BY THE ACTIONS OF THE INTERVENER'S REPRESENTATIVES IN REQUESTING EMPLOYEES TO TURN OVER TO THE INTERVENER

THE REGISTERED LETTERS SENT BY THE APPLICANT TO THE EMPLOYEES. IF INSTEAD OF MAKING THESE REQUESTS THE INTERVENER HAD INSTRUCTED THE EMPLOYEES TO RETURN THE LETTERS THEN, AFTER INVESTIGATION, ANY CARDS FOUND TO BE DEFECTIVE WOULD HAVE BEEN WITHDRAWN AND, IF THEY HAD NOT BEEN, THE INTERVENER WOULD HAVE BEEN ENTITLED TO FIX THE APPLICANT WITH KNOWLEDGE OF IMPROPRIETIES. ANY WIDESPREAD PATTERN MUST INVOLVE A REASONABLE NUMBER OF COLLECTORS. IN CONSIDERING WHAT IS A REASONABLE NUMBER THE BOARD HAS SAID IN A DECISION IN A CASE WHERE STEEL WAS SEEKING TO OBTAIN THE BARGAINING RIGHTS THEN HELD BY MINE MILL THAT IT IS PROPER TO CONSIDER "THE SIZE OF THE BARGAINING UNIT AND THE VAST NUMBER OF PERSONS INVOLVED IN THE CAMPAIGN". (SEE INTERNATIONAL NICKEL COMPANY OF CANADA LTD., O.L.R.B. MONTHLY REPORT, NOV. 1962, P. 299 AT P. 311, 63 C.L.L.C. ¶16,284 AT P. 1182). KEEPING THIS IN MIND IT CANNOT BE SAID THAT THERE HAS BEEN ANY SUCH PATTERN IN THE PRESENT CASE, AND ACCORDINGLY, A VOTE SHOULD BE DIRECTED.

THE INTERVENER SUBMITS THAT, IN ACCORDANCE WITH ITS WELL-ESTABLISHED POLICIES, THE BOARD HAS NO ALTERNATIVE BUT TO DISMISS THE APPLICATION. IT ARGUES THAT IN AS MUCH AS THE OFFICERS AND OFFICIALS OF THE APPLICANT PLAYED AN INSIGNIFICANT PART IN THE ORGANIZATIONAL CAMPAIGN, SIGNING UP NOT MORE THAN 200 CARDS, THE APPLICANT TURNED THE CAMPAIGN OVER TO A GROUP OF ORGANIZERS WHOM IT APPROVED OR SELECTED AND FOR WHOSE ACTS IT MUST ACCEPT RESPONSIBILITY. IT WOULD BE WRONG TO ALLOW THE APPLICANT IN SUCH CIRCUMSTANCES TO CLAIM A "LIGHTER" ONUS BY REASONS OF THE FACT THAT THE COLLECTORS WERE "VOLUNTARY ORGANIZERS", BECAUSE TO DO SO WOULD MEAN THAT A UNION COULD ARGUE THAT IS OFFICIALS AND OFFICERS "KEPT THEIR HANDS IN THEIR POCKETS" AND THUS WAS NOT RESPONSIBLE FOR ANY ERRORS WHICH MAY HAVE BEEN COMMITTED. THE TRUE TEST IN SUCH CIRCUMSTANCES IS, "WERE THEY ACTING IN THE COURSE OF THEIR EMPLOYMENT?" IN THE PRESENT CASE ALL THE COLLECTORS WERE SIGNING UP MEMBERS AND COLLECTING MONEY, WHETHER PROPERLY OR IMPROPERLY, AND THIS WAS ALL WITHIN THE COURSE OF THE AUTHORITY GIVEN TO THEM. IN SUPPORT OF HIS POSITION COUNSEL REFERRED TO THE BOARD'S DECISIONS IN THE DOMINION STORES LTD. CASE, O.L.R.B. MONTHLY REPORT, DEC., 1964, P. 447, SLOUGH ESTATES (CAN.) LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE, 1965, P. 173, AND TO A DECISION OF THE BRITISH COLUMBIA COURT OF APPEAL IN UPHOLSTERERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1 V. HANKIN AND STRUCK FURNITURE LTD. ET AL, (1964) 48 D.L.R. (2D), 248.

COUNSEL FOR THE INTERVENER THEN GOES ON TO ARGUE THAT WHAT HAS OCCURRED IN THE PRESENT CASE IS NOT A CASE OF ISOLATED INCIDENTS BUT RATHER A PATTERN OF MISCONDUCT. HE REFERS TO THE HOWARD SMITH PAPER MILLS LTD. CASE, (1953) C.C.H. CANADIAN LABOUR LAW REPORTS, '49-'54 TRANSFER BINDER, ¶17,068, C.L.S. 76-417 AND POINTS OUT IN ADDITION THAT, IN THE EARLIER INCO DECISION REFERRED TO ABOVE, THE BOARD FOUND ONLY "A FEW ISOLATED CASES". THERE IS NO PARALLEL IN THE PRESENT CASE. WHILE SOME OF THE INCIDENTS ARE ISOLATED, OTHERS ARE NOT, BECAUSE "THEY ARE RELATED THROUGH THE SAME COLLECTOR, THE SAME KNOWLEDGE AND THE SAME SCHEME" AND THIS DISTINGUISHES THE CASE FROM THE EARLIER INCO DECISION (SUPRA). AN EXAMINATION OF THE EVIDENCE RELATING TO THE 34 CARDS IN QUESTION INDICATES IN THE FIRST PLACE IRREGULARITIES FOR WHICH THE APPLICANT MUST ACCEPT RESPONSIBILITY AND WHICH, WHILE SMALL IN NUMBER, ARE SUFFICIENT TO CAST A DOUBT ON ALL THE APPLICANT'S EVIDENCE. FURTHERMORE, THERE IS, AT LEAST IN THE CASE OF THE CARDS INVOLVING THE GIRARDS, EVIDENCE OF DELIBERATE PATTERN AND A DELIBERATE ATTEMPT TO DECEIVE THE BOARD AND THIS, IN ITSELF, IS SUFFICIENT TO WARRANT DISMISSAL OF THE APPLICATION. WHEN TAKEN IN CONJUNCTION WITH THE OTHER IRREGULARITIES, THERE CAN BE NO DOUBT IN THE MATTER EVEN THOUGH 34 CARDS

INVOLVE ONLY 4/10THS OF 1% OF ALL THE CARDS SUBMITTED BY THE APPLICANT. THIS LAST ARGUMENT OF COUNSEL FOR THE INTERVENER MUST BE MODIFIED HAVING REGARD TO OUR FINDING THAT 17 AND NOT 34 CARDS CONTAIN IRREGULARITIES.

CONSIDERATION OF BOARD POLICIES

IN VIEW OF THE ARGUMENTS OUTLINED ABOVE, IT IS NECESSARY TO EXAMINE THE BOARD POLICIES APPLICABLE TO MATTERS OF THIS KIND. THE BASIC PRINCIPLES ARE WELL SET OUT IN THE WEBSTER AIR EQUIPMENT COMPANY LTD. CASE, SUPRA, :

... HOWEVER, SINCE THE BOARD IS COMPELLED TO RELY TO SUCH AN EXTENT ON EVIDENCE WHICH, BY THE VERY NATURE OF THINGS, IS NOT SUBJECT TO EXAMINATION BY THE PARTIES TO THE PROCEEDINGS (SEE SECTION 72(1) [NOW SECTION 83(1)] OF THE LABOUR RELATIONS ACT), IT MUST BE VERY CIRCUMSPECT IN ACCEPTING IT AND IT MUST INSIST ON THE HIGHEST STANDARDS OF INTEGRITY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE. ANY ATTEMPT TO MISLEAD THE BOARD OR ANY FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS MUST WEIGH HEAVILY AGAINST AN APPLICANT. IN DEALING WITH THIS SITUATION, THE BOARD HAS MADE A DISTINCTION BETWEEN TWO TYPES OF CASES: (1) WHERE THE ACTION IMPUGNED IS THAT OF A RESPONSIBLE OFFICER OR OFFICIAL OF A UNION, AND (II) WHERE THE ACTION IS THAT OF A SUPPORTER OR CANVASSER ON BEHALF OF AN APPLICANT WHO OCCUPIES AN INFERIOR OFFICE OR NO OFFICE IN THE UNION. IN SO FAR AS THE FIRST OF THESE IS CONCERNED, THE BOARD SAID IN THE RCA VICTOR COMPANY CASE, (1953) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '49-'54, ¶17,067, C.L.S. 76-412, THAT, EVEN WHERE ONLY A SINGLE CARD IS DEFECTIVE AND IT IS SUBMITTED WITH THE KNOWLEDGE OF SUCH RESPONSIBLE OFFICER OR OFFICIAL, "THE BOARD MAY COME TO THE CONCLUSION THAT IT CANNOT PLACE RELIANCE ON ANY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE UNION". WHERE THE IRREGULARITY RELATES TO EVIDENCE OF MEMBERSHIP PROCURED BY A PERSON OF LESSER RANK IN THE UNION ORGANIZATION, THE BOARD HAS TAKEN THE POSITION THAT THE CARD IN RESPECT OF WHICH THE IRREGULARITY IS ESTABLISHED IS DISALLOWED AND THE WEIGHT TO BE GIVEN TO THE REMAINING EVIDENCE OF MEMBERSHIP WILL DEPEND ON THE NATURE OF THE IRREGULARITY AND THE EXTENT TO WHICH THE OBJECTIONABLE PRACTICE WAS RESORTED TO IN THE SIGNING UP OF MEMBERS.

TO THIS SHOULD BE ADDED ONE FURTHER REFERENCE TO THE RCA VICTOR COMPANY LTD. CASE, SUPRA, WHERE, AFTER DEALING WITH THE SITUATION OF A RESPONSIBLE OFFICER OR OFFICIAL OF THE UNION KNOWINGLY SUBMITTING A DEFECTIVE CARD, THE BOARD WENT ON TO SAY:

... A SIMILAR RESULT MAY FOLLOW EVEN IN A CASE WHERE IT IS IMPOSSIBLE TO ESTABLISH THAT AN OFFICER OR OFFICIAL OF THE UNION HAD KNOWLEDGE OF THE IMPROPRIETY, BUT WHERE IT IS EVIDENT THAT HE WAS SO LAX IN REGARD TO THE WAY IN WHICH DOCUMENTARY EVIDENCE OF PAYMENT WAS OBTAINED THAT HE MAY REASONABLY BE TAKEN TO HAVE SHUT HIS EYES TO THE FACTS.

IT IS IMPORTANT TO KEEP IN MIND THE REASONING BEHIND THESE STATEMENTS OF PRINCIPLE WHICH HAVE BEEN REFERRED TO SO OFTEN IN THE BOARD'S JURISPRUDENCE. THE BASIC QUESTION DEALT WITH IN EVERY CASE OF NON-PAY OR NON-SIGN OR OTHER IRREGULARITY IS THE WEIGHT THAT OUGHT TO BE GIVEN THE EVIDENCE OF MEMBERSHIP IN THE CIRCUMSTANCES OF THE PARTICULAR CASE. IN MATTERS OF THIS KIND THE BOARD IS NOT CONCERNED WITH PENALIZING A UNION BUT RATHER WITH REPRESENTATION. SEE ECHLIN-UNITED OF CANADA LTD., O.L.R.B. MONTHLY REPORT, MAY, 1965, P. 91; THE HYDRO ELECTRIC COMMISSION OF THE CITY OF HAMILTON, (1958) C.C.H. CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER, '55-'59, ¶16,120, C.L.S. 76-617. KEEPING THIS IN MIND, WHAT IS INTENDED BY THE STATEMENT IN THE WEBSTER AIR EQUIPMENT CASE THAT "...EVEN WHERE ONLY A SINGLE CARD IS DEFECTIVE AND IT IS SUBMITTED WITH THE KNOWLEDGE OF SUCH RESPONSIBLE OFFICER OR OFFICIAL, 'THE BOARD MAY COME TO THE CONCLUSION THAT IT CANNOT PLACE RELIANCE ON ANY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE UNION.'"? CLEARLY, WHAT THE BOARD IS SAYING IS THAT THE ENTIRE EVIDENCE IS SUSPECT BECAUSE, HAVING REGARD TO THE DEPENDENCE OF THE BOARD ON THE DOCUMENTARY EVIDENCE SUBMITTED, HOW CAN IT RELY ON ANY EVIDENCE OF MEMBERSHIP WHICH SUCH AN OFFICER OR OFFICIAL HAS EITHER PERSONALLY OBTAINED OR WHICH WAS OBTAINED BY OTHERS IN ASSOCIATION WITH HIM OR UNDER HIS DIRECTION. HOWEVER, WE POINT OUT THAT THE BOARD DID NOT SAY THAT THIS RESULT FOLLOWS IN EVERY CASE WHERE A SINGLE DEFECTIVE CARD IS SUBMITTED WITH THE KNOWLEDGE OF A RESPONSIBLE OFFICER OR OFFICIAL. THE WORDS USED ARE "THE BOARD MAY COME TO THE CONCLUSION" (EMPHASIS ADDED) AND OBVIOUSLY WHETHER IT DOES OR DOES NOT WILL DEPEND ON THE FACTS OF THE PARTICULAR CASE.

AGAIN, WHEN DEALING WITH A CASE INVOLVING "A PERSON OF LESSER RANK IN THE UNION ORGANIZATION" THE SAME BASIC QUESTION MUST BE CONSIDERED, THAT IS, THE EFFECT OF THE IRREGULARITY OR IRREGULARITIES ON THE OTHER EVIDENCE OF MEMBERSHIP SUBMITTED IN THE CASE. IF SUCH A PERSON WAS NOT RESPONSIBLE FOR OTHER CANVASSERS OR COLLECTORS THE BOARD, DEPENDING ON THE CIRCUMSTANCES, MAY MERELY DISALLOW THE CARD IN QUESTION OR MAY REJECT ALL OF THE CARDS SIGNED UP BY SUCH A PERSON AND THEN DEAL WITH THE CASE ON THE BASIS OF THE REMAINING EVIDENCE. IF SUCH A PERSON WAS RESPONSIBLE FOR THE ACTS OF OTHERS IN THE CAMPAIGN, THEN THE CARDS SIGNED UP BY SUCH OTHER PERSONS MAY ALSO BE SUSPECT. SEE, FOR EXAMPLE, HERSHEY CHOCOLATE OF CANADA, LIMITED CASE, C.L.R.B. MONTHLY REPORT, MAY 1963, P. 73, THOMAS DELLELCE AND COMPANY LIMITED CASE, C.L.R.B. MONTHLY REPORT, JANUARY 1962, P. 341, MAX FACTOR AND COMPANY CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1964, P. 616.

HOWEVER, IN SOME CIRCUMSTANCES, EVEN THE FACTS OF RANK AND FILE CANVASSERS MAY AFFECT THE WEIGHT TO BE GIVEN TO EVIDENCE OF MEMBERSHIP APART FROM THE EVIDENCE FOR WHICH THEY WERE RESPONSIBLE AND DESPITE THE FACT THAT THE IRREGULARITIES WERE NOT KNOWN TO RESPONSIBLE UNION OFFICERS OR OFFICIALS. WHETHER THIS RESULT FOLLOWS IN ANY CASE WILL DEPEND ON HOW "WIDESPREAD" IS THE PATTERN, IN THE WORDS OF THE RCA VICTOR COMPANY LTD. CASE (SUPRA) OR IN THE LANGUAGE OF THE WEBSTER AIR EQUIPMENT CASE (SUPRA), "THE NATURE OF THE IRREGULARITY AND THE EXTENT TO WHICH THE OBJECTIONABLE PRACTICE WAS RESORTED TO IN THE SIGNING UP OF MEMBERS". IN OTHER WORDS, IN THE PARTICULAR CIRCUMSTANCES OF A CASE, THE BOARD MAY CONCLUDE THAT BECAUSE OF THE EXTENT OF THE OBJECTIONABLE PRACTICES BY RANK-AND-FILE, IT IS LIKELY THAT SUCH PRACTICES WERE USED BY OTHERS ENGAGED IN THE CAMPAIGN AND, FURTHER, THAT IF THIS IS THE CASE, THE PERSONS RESPONSIBLE FOR THE CAMPAIGN, IF NOT DIRECTLY INVOLVED, HAVE AT THE VERY LEAST FAILED TO LIVE UP TO THEIR RESPONSIBILITIES.

CONSEQUENTLY, ALL OF THE EVIDENCE MAY BE SUSPECT. WE SHALL RETURN TO THIS MATTER IN DUE COURSE.

IN THE PRESENT CASE COUNSEL FOR THE INTERVENER DID NOT SEEK TO REST HIS CASE ON THE GROUND THAT THE ORGANIZERS WERE RESPONSIBLE UNION OFFICERS OR OFFICIALS, AND WE HAVE NO HESITATION IN FINDING THAT THE COLLECTORS INVOLVED IN THE 17 CARDS WE ARE CONSIDERING ARE NOT IN THAT CATEGORY. WHILE IT IS TRUE THAT SOME OF THE COLLECTORS RECEIVED SOME EXPENSE MONEY AND FURTHER, THAT IN THE CASE OF THE GIRARDS EACH HAD ACTED BEFORE FOR MINE MILL, ONE SOME YEARS AGO AS A PAID ORGANIZER IN A PARTICULAR CAMPAIGN, NEVERTHELESS, DURING THE PRESENT CAMPAIGN, ALL WERE EMPLOYEES OF INCO, HAD NEVER HELD OFFICE IN THE UNION, AND DID NOT RECEIVE MONEY FOR LOST TIME. IN OUR VIEW, THESE COLLECTORS FALL WITHIN THE CATEGORY DESCRIBED BY THE BOARD IN THE WEBSTER AIR EQUIPMENT CASE, SUPRA, AS "PERSONS OF LESSER RANK IN THE UNION ORGANIZATION". HOWEVER, THE INTERVENER DOES ARGUE THAT REGARDLESS OF LACK OF KNOWLEDGE OF OR OF EVIDENCE OF LAXITY ON THE PART OF THE APPLICANT'S OFFICERS AND OFFICIALS, THE APPLICANT MUST ACCEPT RESPONSIBILITY FOR THE CONDUCT OF SUCH PERSONS OF LESSER RANK BECAUSE THEY WERE ACTING, WHETHER PROPERLY OR IMPROPERLY, IN THE COURSE OF WHAT THEY WERE APPROVED OR SELECTED BY MINE MILL TO DO, NAMELY, SIGN UP MEMBERS AND COLLECT DOLLARS. CONSEQUENTLY ALL OF THE MEMBERSHIP EVIDENCE IS SUSPECT. AS MUST NOW BE READILY APPARENT FROM OUR CONSIDERATION OF THE BOARD'S POLICIES ABOVE, THIS ARGUMENT WOULD SEEM TO BE IN CONFLICT WITH THOSE POLICIES AND THE BASIC CONSIDERATION UNDERLYING THEM. THE CORNERSTONE OF THE INTERVENER'S ARGUMENT IS THAT THE VOLUNTARY ORGANIZERS WERE GIVEN, IN EFFECT, SOLE RESPONSIBILITY FOR THE CAMPAIGN. DO THE DECISIONS OF THE BOARD RELIED ON BY STEEL AND REFERRED TO ABOVE ESTABLISH SUCH A GENERAL PROPOSITION?

IN OUR VIEW, THE STATEMENTS MADE IN THE DOMINION STORES LIMITED AND SLOUGH ESTATES (CANADA) LIMITED CASES MUST BE READ IN THE CONTEXT OF THE FACT SITUATIONS TO WHICH THEY RELATE. IN BOTH CASES A "RANK-AND-FILER" OR "PERSON OF LESSER RANK IN THE UNION ORGANIZATION" ACTED AS COLLECTOR FOR ALL THE CARDS SUBMITTED ON BEHALF OF THE UNION. IN THAT SENSE THEY WERE GIVEN FULL RESPONSIBILITY FOR THE CAMPAIGN. BUT IT IS EQUALLY TRUE THAT, IN LINE WITH PRIOR BOARD DECISIONS, IT WAS OPEN TO THE BOARD IN EACH CASE TO CONCLUDE THAT BECAUSE OF THE NATURE OF THE IRREGULARITY WEIGHT SHOULD NOT BE GIVEN TO THE OTHER MEMBERSHIP EVIDENCE WITH WHICH THE PARTICULAR COLLECTOR WAS CONCERNED, WHETHER THE SOLE COLLECTOR OR NOT. SEE THOMAS DELLELCE AND COMPANY LIMITED, SUPRA. FURTHERMORE, IN THE DOMINION STORES CASE THERE WAS AN ADDED FACTOR, THAT IS, THE FAILURE OF THE OFFICIAL SIGNING THE BOARD'S FORM 9 TO MAKE INQUIRIES. THERE IS NO SUGGESTION OF ANY FAILURE TO MAKE INQUIRIES IN THE PRESENT CASE.

IN ANY EVENT, IF THE CASES IN QUESTION DO INTRODUCE THE FACTOR OF TURNING THE RESPONSIBILITY FOR A CAMPAIGN OVER TO RANK-AND-FILERS AS ONE FOR MATERIAL CONSIDERATION, THAT PROPOSITION MUST BE VIEWED, AS WE SAID ABOVE, IN THE FACT CONTEXT OF THE CASES, AND THE SIGNIFICANT FACTOR IN BOTH CASES WOULD APPEAR TO BE THAT ONLY ONE PERSON WAS INVOLVED IN COLLECTING THE MONEY. CERTAINLY WE DO NOT BELIEVE THAT THE BOARD INTENDED IN THOSE CASES THAT SUCH A PRINCIPLE SHOULD APPLY TO EVERY CASE WHERE THE ONLY COLLECTORS WERE RANK-AND-FILERS, AND PARTICULARLY TO ONE SUCH AS THE PRESENT IN WHICH, IN OUR VIEW, THE CIRCUMSTANCES ARE ENTIRELY DIFFERENT. THAT BEING THE CASE, WE DO NOT FIND IT NECESSARY TO DEAL WITH HANKIN AND STRUCK FURNITURE LTD., A CASE DEALING WITH CONTEMPT OF AN INJUNCTION BY AN OFFICER OF A COMPANY, OTHER THAN

TO OBSERVE THAT THE PRINCIPLES THERE SET OUT ARE NOT ONES, AS HAS BEEN SHOWN, THAT THE BOARD HAS GENERALLY APPLIED IN DEALING WITH THE WEIGHT TO BE GIVEN MEMBERSHIP EVIDENCE IN CERTIFICATION CASES. IN THE RESULT, THEREFORE, WE REJECT THE SUBMISSION OF THE INTERVENER, STEEL, THAT THE APPLICANT AUTOMATICALLY ASSUMES RESPONSIBILITY FOR THE ACTS OF THE COLLECTORS IN THE PRESENT CASE BECAUSE IT TURNED OVER THE WHOLE ORGANIZATIONAL CAMPAIGN TO SUCH PERSONS. WE WOULD ADD THAT THE WALTER E. SELCK OF CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE, 1964, P. 138, A CASE NOT REFERRED TO IN ARGUMENT, OUGHT NOT TO BE REGARDED IN ANY DIFFERENT LIGHT FROM THE DOMINION STORES OR SLOUGH ESTATES CASES.

FACTS CONSIDERED IN LIGHT OF BOARD POLICIES

WE TURN NOW TO A CONSIDERATION OF THE FACTS HAVING REGARD TO THE PRINCIPLES ENUNCIATED ABOVE. THESE PRINCIPLES WERE THOSE APPLIED BY THE BOARD IN THE PREVIOUS INCO CASE AND, WITH THE POSSIBLE EXCEPTION OF THE ONE CARD ON WHICH THE DATES WERE CHANGED, THE LANGUAGE OF THE BOARD IN THE EARLIER DECISION IS APPLICABLE HERE. AFTER REFERRING TO THE WEBSTER AIR EQUIPMENT CASE, THE BOARD WENT ON TO SAY:

THERE IS NOTHING IN THE TESTIMONY WE HAVE HEARD WHICH INDICATES IN ANY WAY THAT ANY RESPONSIBLE OFFICER OR OFFICIAL OF THE APPLICANT UNION SUBMITTED A DEFECTIVE CARD OR THAT ANY SUCH CARD WAS SUBMITTED WITH THE KNOWLEDGE OF A RESPONSIBLE OFFICER OR OFFICIAL OF THE APPLICANT UNION. THE EVIDENCE BEFORE US RELATES EXCLUSIVELY TO RANK AND FILE MEMBERS OF THE APPLICANT. NOR IS THERE ANY EVIDENCE THAT ANY UNION OFFICER OR OFFICIAL WAS SO LAX AS TO THE WAY IN WHICH DOCUMENTARY EVIDENCE OF PAYMENT WAS OBTAINED THAT HE MAY REASONABLY BE TAKEN TO HAVE SHUT HIS EYES TO ANY IMPROPRIETY.

ON THE CONTRARY, THE EVIDENCE HERE IS THAT THE APPLICANT TOOK EXTRA PRECAUTIONS TO ENSURE ITSELF THAT IRREGULARITIES WERE BROUGHT TO LIGHT - PRECAUTIONS THAT, SO FAR AS WE ARE AWARE, HAVE NOT BEEN TAKEN IN ANY PREVIOUS CASE. WE REFER OF COURSE TO THE EFFORT OF MINE MILL TO MAKE INQUIRIES FROM EACH PERSON LISTED IN ITS FILES AS A MEMBER. IN OTHER WORDS, THE APPLICANT WENT BEYOND THE COLLECTORS TO THE EMPLOYEES THEMSELVES. WHEN ITS FIRST EFFORTS WERE UNSUCCESSFUL, IT TRIED AGAIN AND WHILE IT MAY NOT IN POINT OF FACT HAVE ACTUALLY CONTACTED EVERY MEMBER, IT CERTAINLY CANNOT BE ACCUSED OF LAXNESS OR OF SHUTTING ITS EYES OR IN THE WORDS OF COUNSEL FOR THE INTERVENER "OF PUTTING THEIR HANDS IN THEIR POCKETS". FURTHERMORE, THE EVIDENCE IS THAT WHERE IRREGULARITIES WERE ALLEGED, THE FACTS WERE INVESTIGATED AND CARDS WITHDRAWN IF THE CIRCUMSTANCES INDICATED THIS WAS THE PROPER COURSE OF ACTION. WE HAVE ALREADY POINTED OUT THAT TWO OF ITS CARDS WERE ALLOWED TO STAND AND WE HAVE FOUND NOTHING WRONG WITH THOSE CARDS. IN ADDITION TO ALL THIS, THERE IS THE FACT OF THE INTERVENER REQUESTING EMPLOYEES TO HAND OVER THE REGISTERED LETTERS SENT OUT BY THE APPLICANT. WHILE THE EVIDENCE DOES NOT IN MOST INSTANCES JUSTIFY THE BOARD IN MAKING ANY FINDINGS AS TO WHETHER IF STEEL HAD ADVISED THE EMPLOYEES TO WRITE MINE MILL, THE LETTERS WOULD HAVE ARRIVED IN TIME TO PERMIT THE APPLICANT TO WITHDRAW THE CARDS, SIMILAR CONDUCT IN A FUTURE CASE MIGHT WELL BE A FACTOR TO BE TAKEN INTO CONSIDERATION BY THE BOARD. WE HASTEN TO ADD THAT THESE REMARKS ARE NOT INTENDED TO APPLY TO UNIONS WHICH DISTRIBUTE THEIR OWN QUESTIONNAIRE IN AN ATTEMPT TO FIND EVIDENCE OF IRREGULARITIES.

THE CARD WHICH WE REFERRED TO ABOVE AS CONSTITUTING A POSSIBLE EXCEPTION TO OUR GENERAL FINDINGS IS THE ONE ON WHICH DATES WERE ADDED OR CHANGED AFTER BEING HANDED IN TO THE MINE MILL OFFICE BY THE COLLECTOR. IN CONSIDERING THE SIGNIFICANCE OF THE CHANGES IT WILL BE RECALLED THAT AFTER A CAREFUL SCRUTINY OF ALL THE CARDS, THE BOARD CAUSED ITS EXAMINERS TO MAKE INQUIRIES CONCERNING SOME 62 CARDS WITH SIMILAR DEFECTS. AS A RESULT OF THE EXAMINERS' REPORTS, THE BOARD FOUND IT NECESSARY TO CONDUCT HEARINGS WITH RESPECT TO ONLY THREE CARDS AND, AFTER HEARING THE EVIDENCE, THE BOARD FOUND ONLY ONE CARD OUT OF THE THOUSANDS FILED THAT MIGHT BE CONSIDERED IRREGULAR. IN ADDITION TO THIS, AS WAS INDICATED EARLIER, IT IS UNLIKELY THAT THERE WAS ANY DELIBERATE ATTEMPT TO MISLEAD THE BOARD, HAVING REGARD TO THE DATE INSERTED AND TO THE FACT THAT THERE WAS NO ATTEMPT TO CONCEAL THE CHANGE MADE. IN THESE CIRCUMSTANCES AND DESPITE THE ABSENCE OF ANY EXPLANATION, WE ARE NOT PREPARED TO MODIFY OUR GENERAL FINDINGS, ABOVE, RESPECTING THE KNOWLEDGE AND GENERAL CONDUCT OF THE APPLICANT'S OFFICERS AND OFFICIALS.

THIS BRINGS US THEN, AS IT DID THE BOARD IN THE EARLIER INCO CASE, TO THE SECOND BRANCH OF THE STATEMENT SET OUT IN THE WEBSTER AIR EQUIPMENT CASE, SUPRA, THAT IS, THE WEIGHT TO BE GIVEN TO THE REMAINING EVIDENCE OF MEMBERSHIP HAVING REGARD TO THE EXTENT OF THE IRREGULARITIES AND TO THE FACT THAT THE CARDS IN QUESTION WERE PROCURED BY PERSONS OF LESSER RANK IN THE UNION ORGANIZATION. AS WE POINTED OUT EARLIER, THE DECISIONS OF THE BOARD DEALING WITH SIMILAR PROBLEMS MUST BE READ IN THE LIGHT OF THEIR PARTICULAR FACT SITUATIONS. WHAT MAY HAVE BEEN REGARDED AS A PATTERN IN ONE CASE WOULD NOT NECESSARILY BE SO IN ANOTHER. THE FACT IS THE PRESENT CASE HAS NO PARALLEL OTHER THAN ITS EARLIER COUNTERPART. COUNSEL FOR THE INTERVENOR POINTS TO THE HOWARD SMITH PAPER MILLS LTD. CASE, SUPRA, AS A GUIDE. THE BOARD IN THAT CASE FOUND THAT THERE WAS ONE FORGED CARD, THREE CASES OF NON-PAY AND THREE CASES OF EMPLOYEES NOT RECEIVING RECEIPTS OUT OF 562 CARDS FILED. THIS WAS HELD TO CONSTITUTE A PATTERN FATAL TO THE APPLICATION. BUT THAT CASE WAS ONE DEALING WITH PAID ORGANIZERS AND AS THE WEBSTER AIR EQUIPMENT CASE STATES, EVEN A SINGLE DEFECTIVE CARD IN SUCH A SITUATION MAY PROVE TO BE FATAL. IN THE RCA VICTOR CASE, SUPRA, THE BOARD IN DEALING WITH LOANS BY AN EMPLOYEE FOUND THE INCIDENTS NOT "ISOLATED BUT PART OF A MORE GENERAL, ALTHOUGH NOT WIDESPREAD PATTERN..." THERE IS NO INDICATION IN THE DECISION OF THE TOTAL NUMBER OF CARDS FILED BY THE UNION OF THE TOTAL NUMBER IN WHICH THE EMPLOYEE IN QUESTION PARTICIPATED. IN THE RESULT, THE BOARD ORDERED A REPRESENTATION VOTE WHICH, IN ANY CASE, IS ALL THE PRESENT APPLICANT SEEKS OR IS ENTITLED TO. IN THE CANADIAN WESTINGHOUSE COMPANY LIMITED CASE, (1954) C.C.H. CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER 149-154, ¶17,089, C.L.S. 76-461, THE BOARD FOUND THAT FIVE EMPLOYEES MADE LOANS ON SIX SEPARATE OCCASIONS AND THIS OUT OF 81 CARDS FILED, I.E., OVER 7% OF THE CARDS. THIS, COUPLED WITH THE FACT THAT OVER HALF THE CARDS FILED WERE OBTAINED IN THE LAST TWO DAYS OF THE CAMPAIGN WHEN THE UNION'S POSITION WAS DESPERATE, WAS HELD TO BE FATAL TO THE INTERVENING UNION'S APPLICATION. THE CASE WITH WHICH WE ARE CONCERNED DIFFERS CONSIDERABLY.

AS WE SAID ABOVE, THE FINDINGS IN THESE AND OTHER CASES THAT WEIGHT SHOULD OR SHOULD NOT BE GIVEN THE REST OF THE MEMBERSHIP EVIDENCE DEPEND ON PARTICULAR FACT SITUATIONS AND THE INFERENCES TO BE DRAWN THEREFROM. HOWEVER, WE DO THINK IT ADVISABLE TO CLEAR UP ONE MATTER. WHEN THE CASES SPEAK OF PATTERN, IT IS NECESSARY TO DISTINGUISH TWO SITUATIONS. PATTERN MAY REFER TO THE EXTENT OF THE OBJECTIONABLE ACTIVITY CARRIED ON BY A SINGLE COLLECTOR. THIS WILL BE A MATERIAL FACTOR IN CONSIDERING WHAT WEIGHT SHOULD BE GIVEN TO

THAT COLLECTOR'S OTHER CARDS AND TO THE CARDS OF OTHERS FOR WHOM HE MAY BE RESPONSIBLE OR WITH WHOM HE MAY BE ASSOCIATED, BUT IT IS NOT NECESSARILY A MATERIAL FACTOR TO BE CONSIDERED IN DETERMINING THE WEIGHT TO BE GIVEN THE REMAINING EVIDENCE OF MEMBERSHIP. PATTERN MAY ALSO REFER TO THE EXTENT OF THE OBJECTIONABLE PRACTICES AMONG A NUMBER OF COLLECTORS AND IN SUCH A CASE IS A MATERIAL FACTOR IN CONSIDERING THE WEIGHT TO BE GIVEN ALL THE EVIDENCE OF MEMBERSHIP FILED IN A CASE.

IN SEEKING TO DETERMINE THE EFFECT OF THE IRREGULARITIES FOUND TO EXIST IN THE PRESENT CASE ON THE REMAINING EVIDENCE OF MEMBERSHIP IT IS PROPER, IN OUR JUDGMENT, TO CONSIDER THE FOLLOWING MATTERS:

1. THE SIZE OF THE BARGAINING UNIT AND THE VAST NUMBER OF PERSONS INVOLVED IN THE CAMPAIGN. (SEE THE EARLIER INCO CASE, SUPRA) IN THIS CONNECTION, WE NOTE THAT THE BARGAINING UNIT CONSISTS OF OVER 15,000 EMPLOYEES, PROBABLY ONE OF THE LARGEST IN CANADA, THAT EVIDENCE OF MEMBERSHIP WAS FILED FOR 7,817 PERSONS AND THAT OVER 830 ORGANIZERS PARTICIPATED IN THE CAMPAIGN WHICH LASTED FOR ABOUT A YEAR.

2. THE EXTENT OF THE INVESTIGATIONS INTO THE MEMBERSHIP EVIDENCE (SEE THE EARLIER INCO CASE) BY THE INTERVENER, THE BOARD AND THE APPLICANT. IT IS CLEAR THAT THE INTERVENER ATTEMPTED TO ASCERTAIN EVIDENCE OF IRREGULARITIES TO THIS END THEY PREPARED VARIOUS FORMS FOR SIGNATURE BY EMPLOYEES, A NUMBER OF WHICH WERE FILED WITH THE BOARD BY THE INTERVENER IN SUPPORT OF ITS ALLEGATIONS. ONE OF THESE FORMS, REFERRED TO THROUGHOUT THE HEARINGS AS "THE GREEN FORM" ASKED VARIOUS QUESTIONS OF EMPLOYEES AS, FOR EXAMPLE, WHETHER THEY HAD SIGNED A MINE MILL CARD, PAID A DOLLAR, OBTAINED A RECEIPT OR MEMBERSHIP CARD, RECEIVED A REGISTERED LETTER OR HAD REPLIED TO THAT LETTER. ANOTHER FORM USED WAS A YELLOW CARD WHICH ON ONE SIDE CONTAINED THE STATEMENT THAT THE "UNDERSIGNED" HAD SIGNED A MINE MILL CARD BUT HAD NOT PAID ANY MONEY TO MINE MILL AND, ON THE REVERSE SIDE, PROVIDED AN OPPORTUNITY TO THE PERSON SIGNING TO REVOKE HIS MEMBERSHIP IN MINE MILL AND/OR CERTIFY AS TO HIS MEMBERSHIP IN STEEL. WHILE WE HAVE NO DIRECT EVIDENCE INDICATING THE EXTENT OF THE DISTRIBUTION OF THE FORMS, COUNSEL FOR THE INTERVENER TOLD THE BOARD THAT THE INTERVENER HAD ITS OWN LISTS OF PERSONS WHOSE CARDS MIGHT BE SUSPECT AND THAT, IN ADDITION, EMPLOYEES CAME TO THE STEEL OFFICE TO VOLUNTEER INFORMATION. IT IS CLEAR FROM THE EVIDENCE THAT REPRESENTATIVES OF STEEL WERE QUESTIONING EMPLOYEES AT WORK AND WERE MAKING UNSOLICITED VISITS TO THEIR HOMES. AS A RESULT OF ITS INVESTIGATIONS, WHICH CONTINUED AFTER THE HEARINGS COMMENCED, STEEL FILED CHARGES OF NON-PAY ETC. INVOLVING SOME 164 CARDS. IN THE CIRCUMSTANCES, WE MAY FAIRLY ASSUME THAT STEEL, THE INCUMBENT UNION, MADE EVERY EFFORT TO UNCOVER ANYTHING IN THE WAY OF IRREGULARITIES IN THE MEMBERSHIP EVIDENCE SUBMITTED BY MINE MILL. ALTOGETHER APART FROM THE ALLEGATIONS MADE BY STEEL, THE BOARD INVESTIGATED A FURTHER 96 CARDS. THE RESULTS OF THOSE INVESTIGATIONS HAVE BEEN SET OUT EARLIER IN THIS DECISION. FINALLY, WE HAVE THE INVESTIGATIONS, ALREADY DETAILED, UNDERTAKEN BY THE APPLICANT. AS WE SAID ABOVE, THIS REPRESENTED A CONSCIOUS EFFORT OF GREAT MAGNITUDE IN A PARTICULARLY COMPLEX SITUATION TO ASCERTAIN IF IRREGULARITIES HAD OCCURRED AND IF THEY HAD, TO BRING THEM TO THE ATTENTION OF THE BOARD. IT SEEMS CLEAR THAT THIS EFFORT ON THE PART OF MINE MILL REVEALED ONLY A FEW DEFECTIVE CARDS.

3. THE THIRD MATTER TO BE CONSIDERED IS THE NATURE OF THE IRREGULARITIES. THERE ARE 17 CARDS IN QUESTION. ONE OF THESE, THE CARD WITH THE CHANGED DATES, WE HAVE ALREADY CONSIDERED AND FOUND NOT TO INVOLVE ANY ATTEMPT TO MISLEAD THE BOARD. ANOTHER CARD TURNED OUT TO BE A CASE OF NON-SIGN. THIS WAS THE ONLY INSTANCE OF THIS TYPE OF IRREGULARITY FOUND TO EXIST IN ALL OF THE CARDS FILED. FURTHERMORE, WE HAVE FOUND THAT THE COLLECTOR IN QUESTION COULD NOT BE FIXED WITH KNOWLEDGE THAT THE PERSON WHO SIGNED WAS NOT THE PERSON HE PURPORTED TO BE. THE REMAINING 15 CARDS INVOLVE LOANS BY COLLECTORS OR THIRD PARTIES. IN ONE OF THESE THE LOAN BY THE THIRD PARTY WAS NOT KNOWN TO THE COLLECTOR. SOME OF THE LOANS WERE MADE IN THE LAST STAGES OF THE CAMPAIGN, OTHERS OCCURRED EARLIER ON. APART FROM THE GIRARDS, THERE IS NO EVIDENCE TO SHOW OR SUGGEST THAT THE COLLECTORS WERE INVOLVED WITH ONE ANOTHER OR WITH OTHER COLLECTORS IN THEIR PRACTICES OR, WITH ONE EXCEPTION, THAT THEY WERE RESPONSIBLE FOR OTHER PERSONS INVOLVED IN THE CAMPAIGN. MEALEY IS THE ONE EXCEPTION. HE TURNED OVER SOME CARDS TO A PERSON WHO WAS NOT, ON THE EVIDENCE, AN APPROVED COLLECTOR, BUT FOR WHOSE ACTIONS HE MUST OF COURSE ACCEPT RESPONSIBILITY. IN THE CASE OF THE GIRARDS THERE IS NO QUESTION BUT THAT THEY ENGAGED IN PRACTICES WHICH CONSTITUTED A PATTERN AND AN ATTEMPT TO MISLEAD THE BOARD. ON THE OTHER HAND, THERE IS NO EVIDENCE THAT THEY WERE RESPONSIBLE FOR THE ACTIONS OF OTHERS ENGAGED IN THE CAMPAIGN OR THAT THEIR MALPRACTICES WERE CARRIED ON IN CONJUNCTION WITH OTHER COLLECTORS.

THE NET RESULT, THEREFORE, IS THAT WE ARE CONCERNED IN THIS CASE WITH THE ACTIONS OF 11 COLLECTORS, 2 OF WHOM ACTED IN CONCERT, BUT NOT ONE OF WHOM IS SHOWN TO BE LINKED IN ANY WAY WITH ANY OF THE OTHER 800 COLLECTORS IN THE CAMPAIGN. DO THESE INCIDENTS, TAKEN AS A WHOLE, CONSTITUTE A PATTERN SUCH AS TO LEAD US TO THE CONCLUSION THAT DOUBT IS CAST ON ALL THE REMAINING MEMBERSHIP EVIDENCE? TAKING INTO CONSIDERATION ALL THE FACTORS DISCUSSED ABOVE, WE ARE NOT PREPARED TO FIND THAT DOUBT HAS BEEN CAST ON THE EVIDENCE OF MEMBERSHIP OBTAINED BY THE OTHER COLLECTORS.

THERE REMAINS FOR CONSIDERATION THE WEIGHT TO BE GIVEN THE EVIDENCE OF MEMBERSHIP OBTAINED BY THE 11 COLLECTORS IN QUESTION. WE HAVE NO HESITATION IN FINDING THAT DOUBT IS CAST ON ALL OF THE CARDS OBTAINED BY THE GIRARDS. THE SAME IS TRUE WITH RESPECT TO SORENSON'S CARDS. SORENSON, IT WILL BE RECALLED, WAS FOUND TO HAVE MADE LOANS IN TWO CASES. HAVING REGARD TO THESE FINDINGS WE HAVE NOT DEEMED IT NECESSARY TO SET OUT THE ORAL REASONS GIVEN AT THE HEARING ON AUGUST 5TH FOR REFUSING, AT THAT TIME, THE REQUEST OF THE INTERVENER THAT THE BOARD INVESTIGATE ALL THE CARDS SUBMITTED BY THE GIRARDS AND SORENSON. THE REQUEST WAS NOT MADE AGAIN. WE ALSO FIND THAT DOUBT HAS BEEN CAST ON THE CARDS OBTAINED BY BEATTIE. THERE WERE NO EXTENUATING CIRCUMSTANCES IN THE CASE OF HIS LOAN TO MUNRO AND HIS ANSWERS IN THE WITNESS BOX ABOUT OTHER LOANS WERE FAR FROM SATISFACTORY. WE FOUND LEVESQUE TO BE A TRUTHFUL WITNESS AND, IN THE CIRCUMSTANCES, WE FIND THAT DOUBT HAS NOT BEEN CAST ON THE OTHER CARDS OBTAINED BY HIM. OF COURSE CARRIERE'S CARD WILL NOT BE COUNTED. IT MAY WELL BE THAT IN THE CASE OF THE REMAINING 6 COLLECTORS, NAMELY CHELLEW, OSJANIKOW, WURSCH, GAVAN, LALONDE AND MEALEY, NO WEIGHT SHOULD BE GIVEN TO ANY OF THE CARDS OBTAINED BY THEM. HOWEVER, IT IS NOT NECESSARY TO REACH ANY FINAL DECISION IN THEIR CASES BECAUSE, EVEN IF ALL THEIR CARDS ARE DISALLOWED, THE TOTAL NUMBER, INCLUDING THOSE OF THE GIRARDS, SORENSON AND BEATTIE, SUBMITTED TO THE BOARD IS JUST UNDER 400. THIS FIGURE INCLUDES 29 WITHDRAWN AND "LOST" CARDS. IF ALL WERE DISALLOWED, THE APPLICANT WOULD STILL HAVE AS MEMBERS OVER 45% OF THE EMPLOYEES IN THE BARGAINING UNIT. MOREOVER, IT IS NOT NECESSARY FOR THE BOARD TO MAKE RULINGS RESPECTING 84 CARDS REFERRED

TO UNDER THE HEADING OF "ADDITIONAL INFORMATION" ON THE BOARD'S SECOND COUNT, SUPRA, PP. 18-19, BECAUSE IF FOR PRESENT PURPOSES THESE CARDS, ALONG WITH THOSE OF THE COLLECTORS, WERE ALL DISALLOWED, THE APPLICANT WOULD STILL HAVE APPROXIMATELY 210 CARDS IN EXCESS OF THE NUMBER REQUIRED FOR A REPRESENTATION VOTE.

CONCLUSION

TAKING INTO ACCOUNT, THEN, THE EVIDENCE BEFORE US, THE REPRESENTATIONS OF THE PARTIES AND OUR FINDINGS AS DETAILED IN THESE REASONS, THE BOARD IS SATISFIED THAT THE APPLICANT HAS AS MEMBERS OVER 45% OF THE EMPLOYEES IN THE AGREED BARGAINING UNIT. THE RECORD, THEREFORE, WILL BE ENDORSED IN ACCORDANCE WITH THIS FINDING, AND THE ENDORSEMENT WILL INCLUDE A DIRECTION FOR THE TAKING OF A REPRESENTATION VOTE IN WHICH THE VOTERS WILL BE ASKED TO CHOOSE BETWEEN THE APPLICANT, MINE MILL, AND THE INTERVENER, STEEL.

10782-65-R: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. COOPER-WEEKS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDERMOTT.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., M. FEDERMAN, L. WEISDORF AND A. HERSHKOVITZ FOR THE APPLICANT, JOHN P. SANDERSON, WALTER REID AND JACK COOPER FOR THE RESPONDENT, SHERIDAN MCGINTY FOR A GROUP OF EMPLOYEES.

DECISION OF: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER D. McDERMOTT.
(JANUARY 31, 1966.)

1. "THIS IS AN APPLICATION FOR CERTIFICATION. FOLLOWING THE BOARD'S DECISION DATED DECEMBER 3, 1965, WHEREIN THE BOARD DETERMINED THE APPROPRIATE BARGAINING UNIT IN THIS MATTER, THE REGISTRAR LISTED THIS APPLICATION FOR CONTINUATION OF HEARING ON ALL OUTSTANDING ISSUES INCLUDING THE HEARING OF EVIDENCE RELATING TO THE ORIGINATION, CIRCULATION AND PREPARATION OF THE DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION AND THE CHARGES MADE BY THE APPLICANT IN CONNECTION THEREWITH.

2. THE APPLICANT CALLED SEVERAL WITNESSES WHO TESTIFIED CONCERNING ACTIVITIES OF OFFICIALS OF THE RESPONDENT DURING THE COURSE OF THE ORGANIZING CAMPAIGN, WHEREBY IT WAS INDICATED TO THE EMPLOYEES THAT THE RESPONDENT WAS NOT IN FAVOUR OF THE EMPLOYEES BEING REPRESENTED BY THE APPLICANT UNION. THE RESPONDENT'S OFFICIALS MADE INQUIRIES OF EMPLOYEES AS TO WHETHER OR NOT THEY HAD JOINED THE APPLICANT UNION. THE EMPLOYEES WERE ALSO ADVISED AT A MEETING CALLED BY THE RESPONDENT'S PRESIDENT TO "SLAM THE DOOR IN THE UNION'S FACE". THE EMPLOYEES WERE INFORMED THAT THEY WERE NOT CHAINED TO THEIR MACHINES AND THAT IF THEY WANTED TO BE REPRESENTED BY A UNION THEY COULD GET OUT AND GO TO WORK AT A FACTORY WHERE THERE ALREADY WAS A TRADE UNION. IN ADDITION, IT WAS INDICATED TO CERTAIN EMPLOYEES, BY OFFICIALS OF THE RESPONDENT, THAT IF THE APPLICANT UNION SUCCEEDED IN ITS ATTEMPT TO BECOME THE BARGAINING AGENT, THE COMPANY MIGHT FIND IT ECONOMICALLY NECESSARY TO LAY OFF 100 TO 125 EMPLOYEES BECAUSE THE COMPANY COULD NOT MEET THE COMPETITION FROM JAPAN.

3. IT IS READILY APPARENT FROM THE OVERT MANNER IN WHICH MR. MCGINTY CIRCULATED THE PETITIONS FOR SIGNATURES, THAT HE HAD NO FEAR OF INTERFERENCE OR OBJECTION FROM THE RESPONDENT. IN VIEW OF THE ACTIVITIES OF THE RESPONDENT'S OFFICIALS AS SET OUT ABOVE THE MANNER IN WHICH MR. MCGINTY CIRCULATED THE PETITION WOULD LIKELY LEAD THE EMPLOYEES TO BELIEVE THAT HIS OPPOSITION TO THE APPLICATION HAD THE SUPPORT AND APPROVAL OF THE RESPONDENT.

4. IN VIEW OF ALL THE CIRCUMSTANCES WHICH LED TO THE ORIGINATION AND CIRCULATION OF THE DOCUMENTS SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENTS WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS MATTER."

DECISION OF BOARD MEMBER H. F. IRWIN: (JANUARY 31, 1966.)

I DISSENT.

THERE WAS NO EVIDENCE ADDUCED AT THE HEARINGS IN THIS MATTER WHICH SHOWS THAT MR. SHERIDAN MCGINTY, THE REPRESENTATIVE OF THE GROUP OF EMPLOYEES WHO OPPOSED THE APPLICATION, HAD ANY ASSISTANCE OR DIRECTION FROM THE RESPONDENT IN THE ORIGINATION AND PREPARATION OF THE DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION OR THAT ANY MEMBER OF MANAGEMENT PARTICIPATED IN THE CIRCULATION OF THESE DOCUMENTS.

I WOULD, THEREFORE, FIND THAT THE DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO NECESSITATE THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

10905-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NATIONAL STEEL CAR CORPORATION LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., AND GERALD GRIFFIN FOR THE APPLICANT, E. L. STRINGER AND T. F. RAHILLY FOR THE RESPONDENT.

DECISION OF THE BOARD: (JANUARY 26, 1966.)

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

2. PRIOR TO THE BOARD'S DECISION DATED OCTOBER 19TH, 1965, WHEREIN THE BOARD DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN, THE RESPONDENT'S SOLICITOR FORWARDED TO THE BOARD AFFIDAVITS SIGNED BY 2 EMPLOYEES WHEREIN THEY STATE THAT THEY PAID NO MONEY TO THE APPLICANT ON ACCOUNT OF INITIATION FEES, EITHER BEFORE OR AFTER THE TIME WHEN THEY SIGNED THEIR MEMBERSHIP CARDS.

3. IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE IN SIMILAR CASES, THE BOARD DIRECTED THAT THE PRE-HEARING REPRESENTATION VOTE BE TAKEN AND THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED PENDING A FURTHER DIRECTION OF THE BOARD.

4. FOLLOWING THE BOARD'S INITIAL INQUIRY THROUGH ITS OFFICERS INTO THE NON-PAY ALLEGATIONS AND ALSO INTO CERTAIN DISCREPANCIES WHICH APPEAR IN SIGNATURES ON CARDS SUBMITTED BY THE APPLICANT, THE BOARD DIRECTED THE REGISTRAR TO LIST THE MATTER FOR HEARING TO INQUIRE INTO THE CIRCUMSTANCES SURROUNDING THE SIGNING OF APPLICATION FOR MEMBERSHIP CARDS OF ANTONIO GONCALVES, BILL GREEN AND ROLAND SIMARD, AND FURTHER TO INQUIRE INTO WHETHER OR NOT THE AFOREMENTIONED PERSONS ACTUALLY SIGNED THE APPLICATIONS FOR MEMBERSHIP CARDS ON THEIR OWN BEHALFS AND ALSO INTO THE CIRCUMSTANCES UNDER WHICH THE INITIATION FEES RELATING TO THE APPLICATION FOR MEMBERSHIP WERE ALLEGED TO HAVE BEEN PAID BY ROGER CHAMPIGNY AND DONALD MARCHAND AND MORE PARTICULARLY INTO THE ALLEGATIONS THAT NEITHER ROGER CHAMPIGNY NOR DONALD MARCHAND PAID ANY MONEY ON THEIR OWN BEHALF.

5. AT THE HEARING, THE PARTIES AGREED THAT CARDS SUBMITTED BY THE APPLICANT ON BEHALF OF ANTONIO GONCALVES AND ROLAND SIMARD WERE NOT SUBMITTED FOR THE 2 EMPLOYEES BY THOSE NAMES EMPLOYED BY THE RESPONDENT ON THE DATE THE APPLICATION WAS MADE, BUT WERE IN FACT SUBMITTED ON BEHALF OF 2 FORMER EMPLOYEES WITH THE SAME NAMES WHO WERE NO LONGER EMPLOYED BY THE RESPONDENT. THIS, OF COURSE EXPLAINS THE DISCREPANCIES IN THE SIGNATURES ON THE CARDS SUBMITTED ON BEHALF OF MR. GONCALVES AND MR. SIMARD.

6. DURING THE COURSE OF THE BOARD'S INQUIRY INTO THE ALLEGATIONS OF "NON-SIGN" BY MR. GREEN AND "NON-PAY" BY MR. CHAMPIGNY AND MR. MARCHAND, INQUIRIES WERE MADE CONCERNING THE MANNER IN WHICH THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 9) WAS COMPLETED AND THE NATURE OF THE INQUIRIES MADE CONCERNING COLLECTORS.

7. THE APPLICANT'S CAMPAIGN TO ORGANIZE THE EMPLOYEES OF THE RESPONDENT WAS DIRECTED BY MR. GERALD GRIFFIN, A STAFF REPRESENTATIVE OF THE APPLICANT, UNDER THE GENERAL SUPERVISION OF MR. S. COOKE, THE AREA REPRESENTATIVE OF THE APPLICANT. IN ADDITION TO MR. GRIFFIN, FOUR OTHER STAFF REPRESENTATIVES OF THE APPLICANT WERE ACTIVELY ENGAGED IN THE CAMPAIGN. THE APPLICANT ALSO HAD THE ASSISTANCE OF SEVERAL VOLUNTEER ORGANIZERS WHO WERE NOT PAID OFFICIALS OF THE APPLICANT. ALL THE CARDS THAT WERE SIGNED IN THE CAMPAIGN WERE TURNED IN TO MR. GRIFFIN OR HIS SECRETARY AND MR. GRIFFIN RETAINED CUSTODY OF THE CARDS UNTIL IT WAS TIME TO MAKE THE APPLICATION. IMMEDIATELY PRIOR TO THE APPLICATION BEING MADE, MR. GRIFFIN ASSEMBLED AND COUNTED THE CARDS AND HANDED THEM OVER TO MR. COOKE WHO IN TURN FORWARDED THE CARDS TO THE BOARD.

8. WHILE MR. COOKE WAS NOT CALLED TO TESTIFY, IT WOULD APPEAR FROM THE EVIDENCE OF OTHER WITNESSES THAT, APART FROM ISSUING INSTRUCTIONS AT THE OUTSET OF THE CAMPAIGN AND KEEPING RACK OF THE PROGRESS OF THE CAMPAIGN, MR. COOKE WAS NOT ACTIVELY ENGAGED IN THE SIGNING UP OF MEMBERS OR IN DEALING DIRECTLY WITH THE COLLECTORS WHO WERE SO ENGAGED. HOWEVER, MR. COOKE HAD ASSUMED THE RESPONSIBILITY OF FORWARDING THE MEMBERSHIP DOCUMENTS TO THE BOARD.

9. MR. GRIFFIN TESTIFIED AS TO THE MANNER IN WHICH HE CONDUCTED THE CAMPAIGN. MR. GRIFFIN STATED THAT PRIOR TO HANDING OUT MEMBERSHIP DOCUMENTS TO PERSONS WHO HAD AGREED TO ACT AS COLLECTORS, HE GAVE DETAILED INSTRUCTIONS AS TO THE MANNER IN WHICH THE CARDS WERE TO BE COMPLETED AND THE NECESSITY FOR COLLECTING MONEY ON ACCOUNT OF THE INITIATION FEE FROM EACH PERSON WHO SIGNED. HOWEVER, IT IS CLEAR FROM THE EVIDENCE OF MR. GRIFFIN AND THE OTHER WITNESSES WHO ACTED AS COLLECTORS FOR THE APPLICANT, THAT MR. GRIFFIN DID NOT MAKE ANY INQUIRIES OF THE COLLECTORS IN ORDER TO ASCERTAIN WHETHER THE PERSONS WHO HAD SIGNED CARDS AND RECEIPTS AS COLLECTORS HAD ACTUALLY COLLECTED THE MONIES PAID, AND THAT EACH MEMBER ON WHOSE BEHALF A RECEIPT OR ACKNOWLEDGEMENT OF PAYMENT WAS SUBMITTED HAD PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGEMENT OF PAYMENT AS COLLECTOR IN ACCORDANCE WITH THE REQUIREMENTS OF FORM 9. IN ADDITION, MR. GRIFFIN TESTIFIED THAT WHEN HE TURNED THE CARDS OVER TO MR. COOKE SUCH INQUIRIES WERE NOT MADE OF HIM BY MR. COOKE.

10. MR. GRIFFIN FURTHER TESTIFIED THAT IT WOULD NOT OCCUR TO HIM TO MAKE SUCH INQUIRIES OF OTHER STAFF REPRESENTATIVES OF THE APPLICANT WHO ASSISTED ON THE CAMPAIGN BECAUSE THEY HAD AS MUCH, IT NOT MORE, EXPERIENCE AS HE HIMSELF HAD AND THEY WERE AWARE OF THE REQUIREMENTS OF COLLECTING THE MONEY FROM EACH PERSON WHO SIGNED.

11. MR. D. M. STOREY, THE LEGISLATIVE DIRECTOR OF THE APPLICANT, TESTIFIED THAT HE HAD COMPLETED FORM 9 AND PRIOR TO ITS COMPLETION HE HAD TELEPHONED MR. COOKE AND MADE INQUIRIES OF HIM AND RECEIVED ASSURANCES FROM HIM CONCERNING THE COLLECTORS.

12. ITEM 3 OF FORM 9 READS AS FOLLOWS:

"3. (WHERE THE DOCUMENTARY EVIDENCE CONSISTS IN PART OF RECEIPTS OR OTHER ACKNOWLEDGEMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES)

*PERSONAL KNOWLEDGE,
I HAVE *MADE INQUIRIES CONCERNING THE COLLECTORS AND,

ON THE BASIS OF SUCH *KNOWLEDGE | STATE THAT THE
*INQUIRIES PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS OR OTHER
ACKNOWLEDGEMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR
INITIATION FEES ARE THE PERSONS WHO ACTUALLY COLLECTED
THE MONIES PAID ON ACCOUNT OF DUES OR INITIATION FEES
AND THAT EACH MEMBER, ON WHOSE BEHALF A RECEIPT OR AN
ACKNOWLEDGEMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY
PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN
BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT
OR ACKNOWLEDGEMENT OF PAYMENT AS COLLECTOR, EXCEPT IN
THE FOLLOWING INSTANCES:

*STRIKE OUT PHRASE NOT
APPLICABLE."

13. IT IS READILY APPARENT THAT A PERSON COMPLETING FORM 9 MUST BE SEIZED WITH SOME TYPE OF KNOWLEDGE IN ORDER TO SATISFY THE REQUIREMENTS OF ITEM 3 CITED ABOVE. THIS KNOWLEDGE MAY BE PERSONAL KNOWLEDGE (I.E.) KNOWLEDGE GAINED BY EITHER ACTING AS THE ACTUAL COLLECTOR OR KNOWLEDGE GAINED BY BEING PERSONALLY PRESENT AND ACTUALLY WITNESSING THE TRANSACTION BETWEEN THE COLLECTOR AND THE MEMBER WHEREIN THE MEMBERSHIP CARD WAS SIGNED AND PAYMENT OF MONEY MADE BY THE MEMBER TO THE COLLECTOR.

14. THE OTHER TYPE OF KNOWLEDGE WHICH IS ACCEPTABLE IS THAT KNOWLEDGE GAINED FROM INQUIRIES MADE OF THE PERSONS WHO ACTUALLY ACTED AS COLLECTORS, OR THE PERSONS WHO MADE THE NECESSARY INQUIRIES OF THE ACTUAL COLLECTORS.

15. THE REQUIREMENT THAT INQUIRIES BE MADE IS OBVIOUSLY NOT AN ONEROUS ONE OR ONE THAT IMPOSES AN UNDUE BURDEN ON THE APPLICANT; HOWEVER, THE REQUIREMENT IS THAT INQUIRIES BE MADE.

16. IN ORDER THAT INQUIRIES BE MEANINGFUL IT IS OBVIOUS THAT THEY MUST BE MADE AFTER THE EVENT. INSTRUCTIONS GIVEN TO COLLECTORS PRIOR TO THE SIGNING OF MEMBERS MAY BE HELPFUL OR NECESSARY IN THE CARRYING OUT OF AN ORGANIZING CAMPAIGN, HOWEVER, SUCH INSTRUCTIONS DO NOT OBTAIN THE NECESSITY OF MAKING THE INQUIRIES REQUIRED FOR THE PROPER COMPLETION OF FORM 9. (SEE DOMINION STORES LIMITED CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1964, P. 447).

17. IN THE INSTANT CASE, MR. STOREY, PRIOR TO COMPLETING FORM 9 MADE INQUIRIES OF MR. COOKE. HOWEVER, MR. COOKE HAD MADE NO INQUIRIES OF MR. GRIFFIN AND IN TURN MR. GRIFFIN HAD MADE NO INQUIRIES OF OTHER PERSONS WHO HAD ACTED AS COLLECTORS. IT IS READILY APPARENT THAT THE INQUIRIES MADE BY MR. STOREY WERE MADE OF A PERSON WHO HAD NO DIRECT KNOWLEDGE OF THE COLLECTORS AND THE FAILURE OF MR. COOKE AND MR. GRIFFIN TO MAKE INQUIRIES FRUSTRATED THE PURPOSE OF MR. STOREY'S INQUIRIES. WHERE THE OFFICERS OF AN APPLICANT TRADE UNION HAVE THEMSELVES FRUSTRATED THE INQUIRIES MADE BY THE PERSON WHO COMPLETES FORM 9 AND BY THEIR FAILURE TO FOLLOW THROUGH WITH THEIR OWN INQUIRIES, RENDER THE INQUIRIES MADE BY SUCH PERSON MEANINGLESS, WE MUST FIND THAT FORM 9 IN SUCH CIRCUMSTANCES CAN NOT SERVE THE PURPOSE FOR WHICH IT WAS INTENDED AND IN SUCH CIRCUMSTANCES IS A NULLITY. IN ARRIVING AT THIS CONCLUSION, THE BOARD HAS NOTED WITH APPROVAL THE VALLEY TRANSPORTATION COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE, 1964, P. 140, WHEREIN THE BOARD SAID:

"THE BOARD MUST EXPECT AND INSIST THAT PERSONS WHO FILE APPLICATIONS FOR MEMBERSHIP CARDS AND RECEIPTS AND FORM 9 AS EVIDENCE OF MEMBERSHIP, TAKE ALL NECESSARY PRECAUTIONS AND CARE TO ENSURE THAT THE INFORMATION CONTAINED THEREIN IS TRUE AND ACCURATE. THE BOARD IS ENTITLED TO DEMAND THE HIGHEST STANDARDS OF INTEGRITY, DISCLOSURE, AND ACCURACY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE AND WHERE UNDISCLOSED INACCURACIES OF MATERIAL FACTS ARE LATER BROUGHT TO ITS ATTENTION, TO TAKE A STRICT VIEW OF THEM."

18. THE EVIDENCE IN THE INSTANT CASE DISCLOSES THAT THE OFFICERS OF THE APPLICANT, WHO WERE DIRECTLY RESPONSIBLE FOR THIS CAMPAIGN AND WHO WERE VERY AWARE OF THE BOARD'S REQUIREMENTS, DID NOT TAKE THE NECESSARY STEPS TO ENSURE THAT THE INFORMATION CONTAINED IN FORM 9 IS TRUE AND ACCURATE. THE STANDARD OF CARE, INTEGRITY, DISCLOSURE AND ACCURACY DEMANDED BY THE BOARD HAS NOT BEEN MET IN THESE CIRCUMSTANCES.

19. SINCE THE DOCUMENTS TENDERED AS EVIDENCE OF MEMBERSHIP ARE NOT SUPPORTED BY A RELIABLE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS BECAUSE OF THE FAILURE OF THE APPLICANT'S OFFICIALS TO MAKE THE NECESSARY INQUIRIES, AND SINCE THE ABSENCE OF A RELIABLE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS GOES TO THE VERY ROOT OF THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT, THE BOARD IS CONSTRAINED TO FIND THAT THE MEMBERSHIP DOCUMENTS CAN NOT BE ACCEPTED AS CONTAINING RELIABLE INFORMATION WHICH COULD MEET EVEN THE MINIMUM STANDARDS OF PROOF REQUIRED BY THE BOARD. (SEE ESSEX WIRE CORPORATION LIMITED CASE, O.L.R.B. MONTHLY REPORT, OCTOBER, 1965, P. 490). THIS APPLICATION MUST ACCORDINGLY FAIL.

20. WHILE THE DECISION IS CRITICAL OF THE LACK OF CARE EXHIBITED BY SOME OF THE APPLICANT'S OFFICIALS, THE BOARD HOWEVER, IS OF OPINION THAT WHEN MR. STOREY MADE THE DECLARATION IN FORM 9, HE WAS NOT AWARE OF THE FAILURE ON THE PART OF THE OTHER OFFICIALS AND THEREFORE ACTED IN GOOD FAITH AND IS NOT GUILTY OF A CONSCIOUS ATTEMPT TO MISLEAD THE BOARD.

21. IN VIEW OF THE RESULT IT WILL NOT BE NECESSARY FOR THE BOARD TO DETERMINE THE OTHER ISSUES IN THIS MATTER.

22. THIS APPLICATION IS THEREFORE DISMISSED.

10961-65-R: INTERNATIONAL PRINTING PRESSMEN'S AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. NORTHERN PRINTING COMPANY (RESPONDENT).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W. F. BREEN FOR THE APPLICANT, C. A. MORLEY AND L. S. FARROW FOR THE RESPONDENT.

DECISION OF THE BOARD: (NOVEMBER 3, 1965.)

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. THE TIMMINS TYPOGRAPHICAL UNION No. 884 WAS CERTIFIED BY THE BOARD ON FEBRUARY 4TH, 1960 AS BARGAINING AGENT FOR THE SAME UNIT OF EMPLOYEES WHICH THE APPLICANT IS SEEKING IN THE INSTANT APPLICATION. THE EVIDENCE BEFORE US IS THAT NO COLLECTIVE AGREEMENT WAS SUBSEQUENTLY ENTERED INTO BY THE TIMMINS TYPOGRAPHICAL UNION No. 884 AND THE RESPONDENT AND FURTHER, THAT THERE HAS BEEN NO COMMUNICATION BETWEEN THE PARTIES SINCE 1961. IN THESE CIRCUMSTANCES, THE BOARD FINDS THAT THE TIMMINS TYPOGRAPHICAL UNION No. 884 HAS ABANDONED ITS BARGAINING RIGHTS. ACCORDINGLY, THIS APPLICATION IS PROPERLY BEFORE THE BOARD.

3. THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT TIMMINS, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS EMPLOYED IN THE PRESSROOM FOR WHOM THE APPLICANT IS THE BARGAINING AGENT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE RESPONDENT FILED A LIST CONTAINING THE NAMES OF NINE PERSONS, SIX OF WHOM ARE INCLUDED IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 3. IN SUPPORT OF ITS APPLICATION, THE APPLICANT SUBMITTED AS EVIDENCE OF MEMBERSHIP FOUR RECEIPTS ALL OF WHICH ARE FOR PERSONS WHO ARE INCLUDED IN THE BARGAINING UNIT. THREE OF THE RECEIPTS INDICATE THE PAYMENT OF A ONE DOLLAR MEMBERSHIP FEE. THE FOURTH RECEIPT DOES NOT INDICATE ANY MONEY PAYMENT. NONE OF THE RECEIPTS ARE COUNTERSIGNED BY THE PERSONS WHOSE SIGNATURES APPEAR ON THE CORRESPONDING APPLICATION CARDS. WHILE WE ARE PREPARED TO ACCEPT THE MEMBERSHIP EVIDENCE FOR THE THREE PERSONS FOR WHOM RECEIPTS INDICATE THE PAYMENT OF ONE DOLLAR, WE FIND THAT THE EVIDENCE OF MEMBERSHIP SUBMITTED FOR THE FOURTH PERSON, WHICH SHOWS NO INDICATION OF ANY MONEY PAYMENT ON EITHER THE APPLICATION CARD OR THE RECEIPT, HAS FAILED TO MEET THE BOARD'S MEMBERSHIP REQUIREMENTS. THE BOARD THEREFORE FINDS THAT THE EVIDENCE OF MEMBERSHIP IS SUFFICIENTLY WEAKENED SO AS TO DISENTITLE THE APPLICANT TO CERTIFICATION WITHOUT A REPRESENTATION VOTE.

10981-65-R: NURSES' ASSOCIATION OF RIVERVIEW HOSPITAL (APPLICANT) V. RIVERVIEW HEALTH ASSOCIATION (RESPONDENT).

BEFORE: J. FINKELMAN, Q.C., CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: D. F. O. HERSEY, L. B. SHARPE, MRS. VERNA BLANK, MRS. EMILY JONES AND MISS ANNE GRIBBEN FOR THE APPLICANT, AND JOHN W. WHITESIDE, Q.C., WILLIAM GRIESINGER AND JAMES S. LOCKIE FOR THE RESPONDENT.

DECISION OF THE BOARD: (JANUARY 21, 1966.)

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1)(J) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT ALL REGISTERED AND GRADUATE NURSES OF THE RESPONDENT AT THE RIVERVIEW HOSPITAL, WINDSOR, SAVE AND EXCEPT ASSISTANT NURSING SUPERINTENDENTS AND PERSONS ABOVE THE RANK OF ASSISTANT NURSING SUPERINTENDENT CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE NIGHT SUPERVISOR, THE RELIEF NIGHT SUPERVISOR, THE AFTERNOON SUPERVISOR AND THE RELIEF AFTERNOON SUPERVISOR EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT INCLUDED IN THE UNIT DEFINED IN PARAGRAPH 2, BUT THAT DAY SUPERVISORS DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE INCLUDED IN THE BARGAINING UNIT DEFINED IN PARAGRAPH 2.

4. THE BOARD NOTES THE ADMISSION OF THE RESPONDENT THAT PERSONS CLASSIFIED BY IT AS HEAD NURSES AND ASSISTANT HEAD NURSES DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE INCLUDED IN THE BARGAINING UNIT.

5. WE WISH TO MAKE IT CLEAR THAT OUR DECISION AS TO THE COMPOSITION OF THE BARGAINING UNIT AND AS TO THE STATUS OF THE SEVERAL SUPERVISORS IN THIS CASE IS BASED ON THE EVIDENCE PRESENTED IN THIS CASE. OUR DECISION IS NOT TO BE TAKEN AS AN INDICATION THAT, IN FUTURE CASES, NURSES CLASSIFIED AS SUPERVISORS, HEAD NURSES OR ASSISTANT HEAD NURSES ARE, BY REASON OF THEIR TITLES, TO BE AUTOMATICALLY INCLUDED IN OR EXCLUDED FROM A BARGAINING UNIT. PERSONS CARRYING THE SAME TITLES IN DIFFERENT HOSPITALS MAY WELL HAVE DIFFERENT DUTIES AND RESPONSIBILITIES AND EACH CASE WILL HAVE TO BE DETERMINED ON ITS OWN PECULIAR FACTS.

6. ONE OF THE DIFFICULTIES THAT THE BOARD HAS ENCOUNTERED IN COMING TO A CONCLUSION IN THIS MATTER ON THE STATUS OF THE SUPERVISORS WAS THAT THE AUTHORITY OF THE SUPERVISORS OVER THE OTHER EMPLOYEES WAS NEVER EXPRESSLY SPELLED OUT EITHER IN ANY WRITTEN DOCUMENT OR IN ANY FORMAL ORAL COMMUNICATION EITHER TO THE SUPERVISORS OR TO THE OTHER EMPLOYEES. THE EVIDENCE BEFORE US INDICATES THAT SUCH INFORMATION AS WAS GIVEN TO THE SUPERVISORS CONCERNING THE EXTENT OF THEIR AUTHORITY WAS CONVEYED TO THEM IN GENERAL DISCUSSIONS WITH THE DIRECTOR OF NURSING OVER A PERIOD OF TIME. WHERE THE BOARD IS CALLED UPON TO REACH A CONCLUSION AS TO THE STATUS OF PERSONS WHOM THE EMPLOYER CLASSIFIES AS MANAGERIAL (IN CASES IN WHICH THE TEST OF MANAGERIAL FUNCTIONS TURNS ON SUPERVISION) AND THOSE SUBJECT TO THEIR CONTROL, FAILURE OF THE EMPLOYER TO FORMALIZE THE RELATIONSHIP BETWEEN THESE PERSONS IS A FACTOR THAT MAY WEIGH HEAVILY AGAINST THE EMPLOYER'S CLAIM.

7. THE BOARD IS SATISFIED, ON THE BASIS OF ALL THE EVIDENCE BEFORE IT, THAT MORE THAN FIFTY-FIVE PERCENT OF THE EMPLOYEES IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11126-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) v. FRANKEL STRUCTURAL STEEL LIMITED (RESPONDENT) AND SHOPMEN'S LOCAL UNION #734 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFFILIATED WITH THE A.F.L.-C.I.O., C.L.C.) (INTERVENER #1) AND INTERNATIONAL HOD CARRIERS BUILDING & COMMON LABOURERS UNION OF AMERICA, LOCAL 506 (INTERVENER #2).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: A. E. GOLDEN AND J. TRESSIDER FOR THE APPLICANT, W. S. COOK AND W. G. HARRISON FOR THE RESPONDENT, W. H. CHAPPELL FOR SHOPMEN'S LOCAL UNION #734 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AND D. W. FORGIE FOR INTERNATIONAL HOD CARRIERS BUILDING & COMMON LABOURERS UNION OF AMERICA, LOCAL 506.

DECISION OF THE BOARD: (JANUARY 3, 1966.)

1. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "FRANKEL STRUCTURAL STEEL LIMITED".

2. THE REPRESENTATIVE OF INTERVENER No. 2, THE INTERNATIONAL HOD CARRIERS BUILDING & COMMON LABOURERS UNION OF AMERICA, LOCAL 506

PROCEEDINGS AFTER RECEIVING NOTICE OF THE APPLICANT'S PROPOSED AMENDMENT TO THE BARGAINING UNIT.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

5. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT SEEKS A BARGAINING UNIT, AS AMENDED, CONSISTING OF "IRONWORKERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN LINING UP, SETTING, PLUMBING AND LEVELLING, THE ERECTION OF STRUCTURAL MEMBERS, SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THAT RANK AND EMPLOYEES COVERED BY EXISTING COLLECTIVE AGREEMENTS WITHIN THE GEOGRAPHICAL AREA EIGHT AS DEFINED BY THE ONTARIO LABOUR RELATIONS BOARD". IT IS AGREED THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE THREE INSTRUMENT MEN WHOSE FUNCTIONS ARE ADEQUATELY DESCRIBED BY THE WORDING IN THE DESCRIPTION OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT. THE EMPLOYEES IN QUESTION ARE EMPLOYED FULL TIME IN THEIR CAPACITIES AS INSTRUMENT MEN AND ARE PAID A SALARY ON A WEEKLY BASIS. THEY DO NOT HANDLE STEEL EXCEPT IN RARE INSTANCES ON SMALL JOBS WHEN THEY MAY GIVE THE IRONWORKERS A HAND. ON A LARGE JOB THEY GIVE DIRECTIONS TO A PLUMBING FOREMAN WHO IN TURN WILL DIRECT THE IRONWORKERS. ON A SMALLER JOB THEY MAY GIVE DIRECTIONS DIRECTLY TO THE IRONWORKERS. THE INSTRUMENT MEN MAY THEMSELVES BE ASSISTED BY IRONWORKERS IN THE PERFORMANCE OF THEIR PARTICULAR DUTIES. WHILE MOST OF THEIR WORK IS DONE FROM GROUND LEVEL, THEY ARE REQUIRED TO GO UP INTO THE BUILDING TO TAKE ELEVATIONS.

THE RESPONDENT TAKES THE POSITION THAT THE THREE PERSONS IN QUESTION ARE NOT IRONWORKERS, WHEREAS THE APPLICANT SUBMITS THAT THEIR FUNCTIONS ARE THOSE PERFORMED BY IRONWORKERS.

THE RESPONDENT IS A PARTY TO A COLLECTIVE AGREEMENT BETWEEN THE PRESENT APPLICANT TRADE UNION, NAMELY, LOCAL 721 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, TWO OTHER LOCALS OF THE SAME INTERNATIONAL, AND THE STRUCTURAL STEEL ERECTION CONTRACTORS ASSOCIATION OF ONTARIO, WHICH AGREEMENT IS IN EFFECT UNTIL APRIL 30, 1967. THIS AGREEMENT COVERS:

ALL THE EMPLOYEES OF THE EMPLOYER THAT WORK ON FIELD FABRICATING, INSTALLING, ERECTING, RIGGING, WELDING, REPAIRING AND DISMANTLING OF STRUCTURAL STEEL AND OTHER WORK NORMALLY PERFORMED BY IRON WORKERS, OR OF SUCH WORK UNDERTAKEN BY THE EMPLOYER WITHIN THE PROVINCE OF ONTARIO, SAVE AND EXCEPT PERSONS ABOVE THE RANK OF WORKING FOREMAN, (PUSHER).

THE CLASSIFICATIONS REFERRED TO IN THIS AGREEMENT APPEAR TO BE TWO IN NUMBER, NAMELY, JOURNEYMEN STRUCTURAL IRONWORKERS AND WORKING FOREMEN OR PUSHERS.

IT IS CLEAR THAT THE PRESENT APPLICANT TRADE UNION AND THE PRESENT RESPONDENT COMPANY HAVE NOT BARGAINED FOR THE INSTRUMENT MEN AND HAVE NOT TREATED THEM AS COMING WITHIN THE TERMS OF THE COLLECTIVE AGREEMENT. ON THE OTHER HAND, IT IS CLAIMED THAT THE APPLICANT DOES BARGAIN ON BEHALF OF PERSONS WHO PERFORM SIMILAR FUNCTIONS TO THOSE PERFORMED BY THE INSTRUMENT MEN INVOLVED

IN THIS APPLICATION. THE EVIDENCE IS THAT ONE OTHER COMPANY, NAMELY, DOMINION BRIDGE COMPANY LIMITED, A PARTY TO THE SAME COLLECTIVE AGREEMENT AS THE PRESENT APPLICANT AND RESPONDENT, EMPLOYS TWO INSTRUMENT MEN ON A FULL-TIME BASIS AND THE APPLICANT AND THE SAID DOMINION BRIDGE COMPANY LIMITED TREAT THESE TWO PERSONS AS BEING COVERED BY THE COLLECTIVE AGREEMENT. UNDER THE COLLECTIVE AGREEMENT THESE INSTRUMENT MEN ARE TREATED, ACCORDING TO THE EVIDENCE BEFORE US, AS THE EQUIVALENT OF WORKING FOREMEN OR PUSHERS OR, AT LEAST, ARE PAID THE SAME RATE. THE EVIDENCE ALSO IS THAT IN THE CASE OF THREE OTHER COMPANIES, NAMELY, YORK STEEL CONSTRUCTION LIMITED, NIAGARA STRUCTURAL STEEL LIMITED AND JOHN T. HEPBURN LIMITED, THE PUSHERS OR WORKING FOREMEN DO INSTRUMENT WORK IN ADDITION TO PERFORMING THEIR REGULAR DUTIES. THESE COMPANIES ARE ALL BOUND BY THE SAME COLLECTIVE AGREEMENT REFERRED TO ABOVE WITH THE APPLICANT AND THE APPLICANT BARGAINS ON BEHALF OF THE PUSHERS OR WORKING FOREMEN. COUNSEL FOR THE RESPONDENT MADE A GENERAL STATEMENT, NOT CHALLENGED BY THE APPLICANT, TO THE EFFECT THAT INQUIRIES HAD REVEALED THAT IN THE STRUCTURAL STEEL BUSINESS ABOUT FIFTY PER CENT OF THE EMPLOYERS USED WORKING FOREMEN OR PUSHERS TO DO THE INSTRUMENT WORK WHILE THE OTHER FIFTY PER CENT HIRED INSTRUMENT MEN ON A SALARY BASIS TO DO THE WORK AND, FURTHER, THAT THESE LATTER PERSONS WERE EMPLOYED SOLELY IN THEIR CAPACITY AS INSTRUMENT MEN AND NEVER HANDLED THE STEEL.

6. THE EVIDENCE RESPECTING THE STATUS OF PUSHERS OR WORKING FOREMEN AND INSTRUMENT MEN EMPLOYED BY EMPLOYERS OTHER THAN THE RESPONDENT WAS GIVEN BY A REPRESENTATIVE OF THE APPLICANT. THESE EMPLOYERS WERE NOT PARTIES TO THIS PROCEEDING. IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE POSITION TAKEN BY THE APPLICANT AND RESPONDENT THAT THE INSTRUMENT MEN AFFECTED BY THIS APPLICATION HAVE NOT BEEN BARGAINED FOR UNDER THE COLLECTIVE AGREEMENT, WE ARE NOT PREPARED TO FIND IN THIS CASE THAT THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND RESPONDENT IS A BAR TO THE PRESENT APPLICATION.

7. THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS BASED ON THE PREMISE, INTER ALIA, THAT THE INSTRUMENT MEN PERFORM THE FUNCTIONS OF IRONWORKERS AND OUGHT THEREFORE TO BE CLASSIFIED AS IRONWORKERS OR AS PERSONS DOING THE WORK OF IRONWORKERS. THE EVIDENCE BEFORE US ON THIS QUESTION IS SOMEWHAT SKETCHY. THUS, FOR EXAMPLE, WE HAVE NO FIRST HAND EVIDENCE AS TO THE DUTIES AND RESPONSIBILITIES OF PUSHERS OR WORKING FOREMEN WHO, WE ARE TOLD, DO SOME INSTRUMENT WORK. AGAIN, THERE IS NO REAL EVIDENCE BEFORE US ON WHICH WE COULD REACH A CONCLUSION AS TO WHETHER, AS ARGUED BY THE APPLICANT, THE WORK PERFORMED BY THE INSTRUMENT MEN IS IN FACT A "SPLINTERING OFF" OF WORK NORMALLY PERFORMED BY PUSHERS OR WORKING FOREMEN. IN OTHER WORDS, WHILE THERE IS EVIDENCE THAT SOME COMPANIES CURRENTLY EMPLOY PUSHERS OR WORKING FOREMEN TO DO THIS WORK, THERE IS NO EVIDENCE TO INDICATE WHETHER THEY TOOK IT OVER FROM INSTRUMENT MEN OR WHETHER, TRADITIONALLY, THEY DID THE WORK OF LINING UP ETC. AND SUBSEQUENTLY, IN SOME CASES, HAVE BEEN REPLACED BY FULL TIME INSTRUMENT MEN. IN ADDITION TO ALL OF THIS, THERE IS THE COMPLICATING FACTOR OF WHAT, ON THE SURFACE, APPEAR TO BE DIFFERENT INTERPRETATIONS PLACED ON THE COLLECTIVE AGREEMENT BY THE APPLICANT AND CERTAIN MEMBERS OF THE STRUCTURAL STEEL ERECTION CONTRACTORS ASSOCIATION OF ONTARIO. HAVING REGARD TO THESE CONSIDERATIONS AND TO OUR CONCLUSION (SET OUT INFRA) THAT THERE IS AN ALTERNATIVE METHOD OF DEALING WITH THE MATTER, WE REFRAIN, IN THIS CASE, FROM MAKING ANY DETERMINATION ON THE QUESTION RAISED BY THE APPLICANT.

8. THE QUESTION OF DETERMINING THE BARGAINING UNIT UNDER SECTION 6(1) RATHER THAN UNDER SECTION 6 (2) OF THE LABOUR RELATIONS ACT (AS PROPOSED BY THE APPLICANT) WAS RAISED BY THE BOARD AT THE HEARING. COUNSEL FOR THE RESPONDENT INFORMED THE BOARD THAT NO OTHER MEMBERS OF THE RESPONDENT'S STAFF HAVE A COMMUNITY OF INTEREST WITH THEIR THREE INSTRUMENT MEN. TAKING THIS INTO CONSIDERATION TOGETHER WITH THE GENERAL PRACTICE IN THE CONSTRUCTION INDUSTRY OF ORGANIZING ALONG CRAFT LINES RATHER THAN ON AN INDUSTRIAL BASIS, THAT IS, IN SMALL UNITS RATHER THAN ON AN ALL EMPLOYEE BASIS, WE FIND, IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, THAT UNDER THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT THE THREE INSTRUMENT MEN WOULD CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THE BOARD, THEREFORE, FINDS FURTHER THAT EMPLOYEES IN THE EMPLOY OF THE RESPONDENT ENGAGED IN LINING-UP, SETTING, PLUMBING AND LEVELLING IN CONNECTION WITH THE ERECTION OF STRUCTURAL STEEL WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

IN VIEW OF THE BOARD'S FINDING RESPECTING THE CURRENT COLLECTIVE AGREEMENT BINDING ON THE APPLICANT AND THE RESPONDENT, THE BOARD HAS NOT DEEMED IT NECESSARY TO EXCLUDE FROM THE BARGAINING UNIT PERSONS COVERED BY THAT COLLECTIVE AGREEMENT.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11234-65-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. WEYERHAEUSER CANADA LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., AND J. C. HORAN FOR THE APPLICANT, AND N. L. MATHEWS, Q.C., FOR THE RESPONDENT.

DECISION OF THE BOARD: (JANUARY 18, 1966.)

1. THIS IS AN APPLICATION FOR CERTIFICATION. THE APPLICANT IS AT PRESENT PARTY TO A COLLECTIVE AGREEMENT BETWEEN ITSELF AND THE RESPONDENT, IN WHICH THE APPLICANT IS RECOGNIZED AS BARGAINING AGENT FOR "ALL EMPLOYEES" OF THE RESPONDENT "SAVE AND EXCEPT OFFICE STAFF, FOREMEN, LUMBER GRADERS, LOG SCALERS AND LOG GRADERS AND THOSE ABOVE THE RANK OF FOREMEN, AND WATCHMEN".

2. THE PERSONS WITH RESPECT TO WHOM CERTIFICATION IS NOW SOUGHT ARE TRUCK DRIVERS. THE COLLECTIVE AGREEMENT CONTAINS NO PROVISIONS EXPRESSLY RELATING TO THIS GROUP SINCE THERE HAVE PREVIOUSLY BEEN NO TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN ITS OPERATIONS AT SAULT STE. MARIE. THE COMPANY HAS RECENTLY TRANSFERRED THIS GROUP OF EMPLOYEES TO SAULT STE. MARIE. IT IS CLEAR, HOWEVER, THAT THE PERSONS WITH RESPECT TO WHOM CERTIFICATION IS NOW SOUGHT COME WITHIN THE SCOPE OF THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT NOW IN EFFECT BETWEEN THE APPLICANT AND THE RESPONDENT.

3. IN VIEW OF THE FOREGOING, THE BOARD FINDS THAT THERE IS A SUBSISTING BARGAINING RELATIONSHIP BETWEEN THE APPLICANT AND THE RESPONDENT FOR THE EMPLOYEES FOR WHOM THE APPLICANT NOW SEEKS TO BE CERTIFIED AS BARGAINING AGENT. FOR THE REASONS GIVEN IN THE LOBLAW GROCETERIAS CASE, (1944) D.L.S. 7-1115, AND IN THE NORTHERN ELECTRIC CASE, (1963) 63 C.L.L.C 1192, THE BOARD FINDS THAT NO PURPOSE WOULD BE SERVED BY PROCESSING THIS APPLICATION FURTHER.

4. THE APPLICATION IS THEREFORE DISMISSED.

11235-65-R: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA, OTTAWA LOCAL NO. 5 (APPLICANT) v. SYNDICAT D'OEUVRES SOCIALES, LIMITEE (RESPONDENT) v. SYNDICAT DE L'INDUSTRIE DE L'IMPRIMERIE, REGION OTTAWA-HULL (INTERVENER).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDERMOTT.

APPEARANCES AT THE HEARING: J. P. NELLIGAN, G. ROLLO AND P. CHURCHILL FOR THE APPLICANT, JEAN-ROBERT BELANGER FOR THE RESPONDENT, AND PIERRE GENEST AND J. A. MORIN FOR THE INTERVENER.

DECISION OF: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN: (JANUARY 25, 1966.)

1. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "SYNDICAT D'OEUVRES SOCIALES, LIMITEE".

2. THIS IS AN APPLICATION FOR CERTIFICATION. THE APPLICANT APPLIES, PURSUANT TO THE PROVISIONS OF SECTION 6(2) OF THE LABOUR RELATIONS ACT, FOR A BARGAINING UNIT CONSISTING OF WEB NEWSPAPER PRESSMEN AND WEB OFFSET PRESSMEN.

3. BY THE PROVISIONS OF SECTION 6 SUBSECTION 2 OF THE ACT, WHERE AN APPLICATION IS MADE WITH RESPECT TO A GROUP OF EMPLOYEES WHO EXERCISE TECHNICAL SKILLS OR ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM THE OTHER EMPLOYEES AND COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT, ACCORDING TO ESTABLISHED TRADE UNION PRACTICE, PERTAINS TO SUCH SKILLS OR CRAFT, THE BOARD SHALL DEEM SUCH A GROUP OF EMPLOYEES TO CONSTITUTE A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING IF THE APPLICATION IS MADE BY A TRADE UNION PERTAINING TO SUCH SKILLS OR CRAFT. THE CONCLUDING WORDS OF SUBSECTION 2, HOWEVER, CONTAIN THE PROVISIO THAT THE BOARD SHALL NOT BE REQUIRED TO APPLY SUBSECTION 2 WHERE A GROUP OF EMPLOYEES IS INCLUDED IN A BARGAINING UNIT REPRESENTED BY ANOTHER BARGAINING AGENT AT THE TIME THE APPLICATION IS MADE.

4. THE EMPLOYEES AFFECTED BY THE INSTANT APPLICATION ARE IN FACT REPRESENTED BY THE INTERVENER, AND HAVE BEEN REPRESENTED BY IT FOR MORE THAN

THIRTY YEARS. THESE EMPLOYEES ARE AT PRESENT WITHIN ONE OF TWO BARGAINING UNITS REPRESENTED BY THE INTERVENER, AND EACH OF THEM IS COVERED BY ONE OF TWO COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE INTERVENER, ONE AFFECTING EMPLOYEES IN THE NEWSPAPER DEPARTMENT OF THE RESPONDENT, AND ONE AFFECTING EMPLOYEES IN THE COMMERCIAL PRINTING DEPARTMENT. THE BARGAINING UNITS CONSIST OF "ALL EMPLOYEES" IN THE NEWSPAPER DEPARTMENT AND "ALL EMPLOYEES" IN THE COMMERCIAL PRINTING DEPARTMENT, WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL. THE INTERVENER HAS NEGOTIATED WITH RESPECT TO THE EMPLOYEES AFFECTED BY THE PRESENT APPLICATION, AND SUCH EMPLOYEES HAVE BEEN REPRESENTED ON THE BARGAINING COMMITTEE. THEY HAVE FROM TIME TO TIME AVAILED THEMSELVES OF THE GRIEVANCE PROCEDURE, AND THE INTERVENER HAS ACTED SUCCESSFULLY ON THEIR BEHALF.

5. THE APPLICANT LED EVIDENCE TO THE EFFECT THAT THE RATES OF WAGES PAID THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE NOT AS HIGH AS THE WAGES RECEIVED BY PERSONS PERFORMING SIMILAR WORK ON THE STAFFS OF OTHER NEWSPAPERS IN OTTAWA. THE INTERVENER URGED THAT THE OTHER OTTAWA NEWSPAPERS, HAVING A SUBSTANTIALLY HIGHER CIRCULATION THAN "LE DROIT", THE NEWSPAPER PRODUCED BY THE RESPONDENT, DID NOT PROVIDE A FAIR STANDARD OF COMPARISON, AND LED EVIDENCE TO SHOW THAT THE RATES WERE COMPARABLE TO THOSE PAID BY WHAT IT CONSIDERED TO BE COMPARABLE COMPETITORS. IT SHOULD BE NOTED THAT THE RESPONDENT IS ENGAGED IN BOTH NEWSPAPER AND COMMERCIAL PRINTING, REQUIRING THE SERVICES OF EMPLOYEES AFFECTED BY THIS APPLICATION. THE ISSUE, HOWEVER, IS NOT THE BARGAINING EFFECTIVENESS OF THE INTERVENER, THE ISSUE IS RATHER WHETHER THE INTERVENER HAS REPRESENTED THE GROUP OF EMPLOYEES IN QUESTION PROPERLY, HAVING IN MIND THEIR STATUS AS MEMBERS OF A CRAFT, AND NOT NEGLECTED THEM IN RELATION TO OTHER CLASSES OF EMPLOYEES IN THE BARGAINING UNIT.

6. HAVING IN MIND THE HISTORY OF COLLECTIVE BARGAINING BETWEEN THE RESPONDENT AND THE INTERVENER, THE BOARD IS OF OPINION THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE IN THIS CASE.

7. THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER D. McDERMOTT: (JANUARY 25, 1966.)

I DISSENT.

11246-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION No. 837 (APPLICANT) v. TIDEY CONSTRUCTION Co. LTD. (RESPONDENT) v. OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOC. LOCAL 298 (INTERVENER).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: D. W. FORGIE AND H. MANCINELLIE APPEARING FOR THE APPLICANT, D. E. TIDEY APPEARING FOR THE RESPONDENT AND DUNCAN MCGREGOR AND ANTHONY MARIANO APPEARING FOR THE INTERVENER.

DECISION OF THE BOARD: (JANUARY 13, 1966.)

"THE APPLICANT HAS APPLIED FOR CERTIFICATION FOR CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE HAMILTON AREA. AT THE

HEARING HELD IN THIS MATTER IT WAS DISCLOSED THAT THE APPLICANT AND THE RESPONDENT WERE BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT TRADE UNION AND THE HAMILTON CONSTRUCTION ASSOCIATION WHICH EXPIRED ON APRIL 30, 1965. THE RESPONDENT NOTIFIED THE HAMILTON CONSTRUCTION ASSOCIATION THAT IT WOULD NOT BE BOUND BY ANY NEW COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE ASSOCIATION AND THE APPLICANT. ACCORDINGLY, THE LIST OF NAMES OF EMPLOYERS FOR WHOM THE ASSOCIATION WAS BARGAINING AND WHICH WAS SUBMITTED TO THE APPLICANT AT THE COMMENCEMENT OF THE NEGOTIATIONS DID NOT CONTAIN THE NAME OF THE RESPONDENT. THE RESPONDENT COMPANY IS THUS NOT BOUND BY ANY COLLECTIVE AGREEMENT WHICH MAY HAVE BEEN ENTERED INTO BETWEEN THE APPLICANT AND THE HAMILTON CONSTRUCTION ASSOCIATION.

IT IS CLEAR THAT THERE HAS BEEN NO APPLICATION FOR TERMINATION OF BARGAINING RIGHTS WHICH THE APPLICANT UNION HELD FOR CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE HAMILTON AREA. IT IS ALSO CLEAR THAT THERE HAS BEEN NO ABANDONMENT OF THOSE BARGAINING RIGHTS BY THE APPLICANT TRADE UNION. IN THESE CIRCUMSTANCES, AND AS POINTED OUT TO THE PARTIES AT THE HEARING, THE APPLICANT TRADE UNION STILL HAS BARGAINING RIGHTS FOR CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT COMPANY. IN THESE CIRCUMSTANCES, THERE IS NO NEED TO PROCESS THIS APPLICATION FURTHER AND THE PROCEEDINGS ARE ACCORDINGLY TERMINATED."

INDEXED ENDORSEMENT - SUCCESSOR STATUS

11179-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. GALION MANUFACTURING OF CANADA LTD. (RESPONDENT) V. GALION EMPLOYEES' ASSOCIATION (PREDECESSOR TRADE UNION).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND GEORGE SPECHT FOR THE APPLICANT, R. D. MACDONALD AND E. F. S. SANDERS FOR THE RESPONDENT, WILLIAM O. HEROLD, BRYAN GREEN AND KENNETH GRANTHAM FOR THE OBJECTORS, NO ONE FOR THE PREDECESSOR TRADE UNION.

DECISION OF THE BOARD: (JANUARY 20, 1966.)

1. THIS IS AN APPLICATION FOR A DECLARATION UNDER SECTION 47 OF THE LABOUR RELATIONS ACT THAT THE APPLICANT IS THE SUCCESSOR OF GALION EMPLOYEES' ASSOCIATION AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT.
2. THE APPLICANT CLAIMS THAT IT IS THE SUCCESSOR OF THE PREDECESSOR TRADE UNION BY REASON OF A MERGER BETWEEN THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) AND GALION EMPLOYEES' ASSOCIATION.
3. THE PREDECESSOR TRADE UNION OBTAINED VOLUNTARY RECOGNITION FROM THE RESPONDENT AND WAS A PARTY TO A SUBSISTING COLLECTIVE AGREEMENT WITH THE RESPONDENT WHICH WAS ENTERED INTO ON JANUARY 15TH, 1964 AND WAS SUBSEQUENTLY EXTENDED UNTIL THE 3RD DAY OF NOVEMBER, 1966.

4. IT APPEARED FROM THE EVIDENCE THAT ALL OF THE EMPLOYEES (37 IN NUMBER) OF THE RESPONDENT WERE SERVED BY REGISTERED MAIL WITH NOTICE OF A MEETING CALLED BY GALION EMPLOYEES' ASSOCIATION. THIS NOTICE OF MEETING READS AS FOLLOWS AND IS SIGNED BY THE SECRETARY-TREASURER OF THE PREDECESSOR TRADE UNION.

"GALION EMPLOYEES ASSOCIATION

NOTICE OF MEETING

THE MEMBERSHIP WILL BE ASKED TO APPROVE THE MERGER OF
GALION EMPLOYEES ASSOCIATION WITH UNITED AUTOMOBILE
AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA.

IF THE FOREGOING MOTION IS APPROVED THE APPROPRIATE
STEPS WILL BE TAKEN AT THE SAME MEETING TO DISSOLVE
THE ASSOCIATION.

THE MEETING WILL BE HELD AT Y. M. C. A.

DATE: WEDNESDAY, NOVEMBER 17, 1965, AT 7:30 P.M."

5. THE MEETING OF NOVEMBER 17TH, 1965, WAS CALLED BY GALION EMPLOYEES' ASSOCIATION AND WAS CHAIRED BY MR. GEORGE M. RICHARDS, PRESIDENT OF THE ASSOCIATION.

6. MR. RICHARDS TESTIFIED THAT 30 OF THE EMPLOYEES OF THE RESPONDENT ATTENDED THE MEETING. HE FURTHER TESTIFIED THAT A MOTION ASKING THE MEMBERSHIP TO APPROVE THE MERGER OF GALION EMPLOYEES' ASSOCIATION WITH THE APPLICANT WAS DISCUSSED BY THE MEETING, MOVED AND SECONDED FROM THE FLOOR AND PASSED AT THE MEETING BY A VOTE OF 29 IN FAVOUR AND ONE AGAINST. A SECOND MOTION WAS MOVED AND SECONDED, WHEREIN IT WAS RESOLVED THAT GALION EMPLOYEES' ASSOCIATION BE DISSOLVED. THIS MOTION WAS APPROVED BY A VOTE OF 29 TO 1.

7. THE VOTES TAKEN AT THE MEETING OF NOVEMBER 17TH, 1965, WERE BY A SHOW OF HANDS, WHICH METHOD OF VOTING WAS IN ACCORDANCE WITH THE TERMS OF THE GALION EMPLOYEES' ASSOCIATION CONSTITUTION.

8. MR. GEORGE J. SPECHT, AND INTERNATIONAL REPRESENTATIVE OF THE APPLICANT TESTIFIED THAT, HAVING BEEN APPROACHED BY EMPLOYEES OF THE RESPONDENT, HE ATTENDED A MEMBERSHIP MEETING OF THE PREDECESSOR TRADE UNION IN OCTOBER, 1965 AND EXPLAINED THE ADVANTAGES OF MERGING WITH THE APPLICANT TRADE UNION AND THE PROCEDURAL REQUIREMENTS NECESSARY TO EFFECT SUCH A MERGER.

9. MR. SPECHT ALSO TESTIFIED THAT THE CANADIAN DIRECTOR OF THE APPLICANT APPROVED THE PROPOSED MERGER AND SUBSEQUENT TO THE MEETING OF NOVEMBER 17TH, 1965, REFERRED TO ABOVE, THE INTERNATIONAL SECRETARY-TREASURER OF THE APPLICANT WROTE A LETTER TO THE BOARD WHICH READS AS FOLLOWS:

"THIS IS TO ADVISE YOU THAT THE MERGER OR AMALGAMATION OF
THE GALION EMPLOYEES' ASSOCIATION WITH THE INTERNATIONAL UNION
UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (UAW) IS APPROVED BY THE SAID INTERNATIONAL UNION."

10. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD IS SATISFIED THAT THE PREDECESSOR TRADE UNION HAS SUBSTANTIALLY FULFILLED THE REQUIREMENTS TO EFFECT THE MERGER OF THE GALION EMPLOYEES' ASSOCIATION WITH THE APPLICANT.
11. THE BOARD IS FURTHER SATISFIED THAT THE APPLICANT HAS APPROVED AND ACCEPTED THE MERGER OF THE GALION EMPLOYEES' ASSOCIATION WITH THE APPLICANT.
12. THE BOARD THEREFORE FINDS THAT THE APPLICANT AND THE PREDECESSOR TRADE UNION HAVE SUBSTANTIALLY COMPLIED WITH THAT WHICH IS REQUIRED OF THEM TO EFFECT A MERGER.
13. THE BOARD THEREFORE DECLARES PURSUANT TO THE PROVISIONS OF SECTION 47(1) OF THE ACT THAT THE APPLICANT BY REASON OF A MERGER, IS THE SUCCESSOR OF THE PREDECESSOR TRADE UNION AND HAS ACQUIRED, AS OF NOVEMBER 17TH, 1965, THE RIGHTS, PRIVILEGES AND DUTIES OF GALION EMPLOYEES' ASSOCIATION, WHETHER UNDER THE COLLECTIVE AGREEMENT REFERRED TO ABOVE BETWEEN GALION EMPLOYEES' ASSOCIATION AND THE RESPONDENT, OR OTHERWISE, AND IS THE BARGAINING AGENT FOR THE UNIT OF EMPLOYEES OF THE RESPONDENT FOR WHOM GALION EMPLOYEES' ASSOCIATION WAS HERETOFORE THE BARGAINING AGENT.

INDEXED ENDORSEMENT - SECTION 65

11175-65-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW AND LOCAL 641 (COMPLAINANT) V. ELECTRONIC MATERIALS OF CANADA LIMITED (RESPONDENT)).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

DECISION OF J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER. (JANUARY 28, 1966.)

"ON THE AGREEMENT OF THE PARTIES AND SUBJECT TO THE CONDITIONS ON WHICH THE MATTER WAS PREVIOUSLY ADJOURNED, THIS MATTER IS ADJOURNED SINE DIE.

IF THIS MATTER SHOULD AGAIN BE LISTED FOR HEARING, IT WILL BE LISTED FOR PEREMPTORY HEARING AT THE CONVENIENCE OF THE BOARD."

DECISION OF BOARD MEMBER H. F. IRWIN: (JANUARY 28, 1966.)

THIS COMPLAINT MADE UNDER THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT WAS FIRST LISTED FOR HEARING AT OTTAWA ON JANUARY 6, 1966. ON JANUARY 3RD, A REQUEST FOR AN ADJOURNMENT WAS MADE TO THE BOARD AND, ON AGREEMENT OF THE PARTIES, THE ADJOURNMENT WAS GRANTED. ON JANUARY 4TH, THE BOARD MAILED AN OFFICIAL NOTICE TO THE PARTIES THAT THE CASE HAD BEEN RELISTED FOR HEARING IN OTTAWA ON JANUARY 28TH.

ON JANUARY 27TH, THE DAY BEFORE THE SCHEDULED HEARING, COUNSEL FOR THE APPLICANT REQUESTED ADJOURNMENT SINE DIE ON THE UNDERSTANDING THAT HE WOULD RECOMMEND TO THE COMPLAINANT UNION THAT THE COMPLAINTS BE WITHDRAWN. COUNSEL FOR THE RESPONDENT AGREED TO THE REQUEST FOR ADJOURNMENT ON THAT UNDERSTANDING.

WHILE I AM NOT DISSENTING FROM THE DECISION TO GRANT THE ADJOURNMENT AS REQUESTED, I WISH TO RECORD MY STRONG RELUCTANCE TO GRANT LAST MINUTE REQUESTS

FOR ADJOURNMENT OF HEARINGS TO BE HELD OUTSIDE TORONTO. THE BOARD MUST MAKE TRAVELLING ARRANGEMENTS AND HOTEL RESERVATIONS FOR THE BOARD MEMBERS AND THE CLERK. TRANSPORTATION TICKETS MUST BE PURCHASED AND PICKED UP. SUITABLE ACCOMMODATION FOR THE HOLDING OF THE HEARING MUST BE FOUND AND RESERVED. THE PREPARATION AND TRANSPORTATION OF FILES AND EQUIPMENT MUST BE SUPERVISED.

IN ADDITION, BOARD MEMBERS MUST SET ASIDE, SEVERAL WEEKS IN ADVANCE, THE DAYS REQUIRED FOR TRAVELLING AND THE HEARING. THEIR OTHER BUSINESS ARRANGEMENTS MUST BE MADE ON THE ASSUMPTION THAT THE HEARING WILL BE HELD AS SCHEDULED. IF THE HEARING IS HELD, BOARD MEMBERS ASSIGNED TO THE CASE ARE EXPECTED TO BE THERE. CONSEQUENTLY, LAST MINUTE CANCELLATIONS CAUSE BOARD MEMBERS NOT ONLY GREAT INCONVENIENCE BUT THEY ARE OFTEN UNABLE TO EFFECTIVELY RE-ORGANIZE THEIR BUSINESS ACTIVITIES FOR THE DAYS CONCERNED ON SUCH SHORT NOTICE. IN SOME CASES, THEY HAD ALREADY REFUSED TO ACCEPT OTHER REMUNERATIVE ASSIGNMENTS FOR THE DAYS THEY HAD SET ASIDE FOR THE BOARD HEARING.

COURTESY TO THE BOARD SHOULD IMPEL COUNSEL AND OTHER REPRESENTATIVES OF THE PARTIES TO REQUEST ADJOURNMENTS ONLY WHEN ABSOLUTELY NECESSARY AND THEN AS FAR IN ADVANCE OF THE HEARING DATE AS POSSIBLE. I DO NOT BELIEVE THAT THEY WOULD DELIBERATELY OR UNNECESSARILY INCONVENIENCE BOARD MEMBERS. PERHAPS THEY HAVE NOT BEEN FULLY AWARE OF THE SPECIAL PREPARATION AND ARRANGEMENTS THAT MUST BE MADE WHEN HOLDING HEARINGS OUTSIDE TORONTO. FOR THE ABOVE REASONS, I FEEL PERSONALLY OBLIGED TO BRING THE ABOVE FACTS TO THEIR ATTENTION AND REQUEST THEIR CONSIDERATION AND CO-OPERATION.

TO AVOID ANY MISUNDERSTANDING, THE WORDS "BOARD MEMBERS" WHEREVER USED IN MY REMARKS REFER ONLY TO MEMBERS REPRESENTING EMPLOYEES OR EMPLOYERS AND ARE NOT TO BE CONSTRUED OR INTERPRETED TO INCLUDE THE PRESIDING OFFICERS, I.E., THE CHAIRMAN, THE VICE-CHAIRMAN OR DEPUTY VICE-CHAIRMEN.

INDEXED ENDORSEMENT - SECTION 47A

11104-65-M: THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC, AND ITS LOCAL 440 (APPLICANT) v. THE BORDEN COMPANY LIMITED (RESPONDENT) v. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES UNION, LOCAL 647, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDERMOTT.

APPEARANCES AT THE HEARING: H. BUCHANAN AND F. JEAVONS APPEARING FOR THE APPLICANT, C. R. OSLER, Q.C., APPEARING FOR THE RESPONDENT, I. J. THOMSON, S. POWERS AND S. MILLAR APPEARING FOR THE INTERVENER.

DECISION OF THE BOARD: (DECEMBER 7, 1965.)

1. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "THE BORDEN COMPANY LIMITED:.
2. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT.
3. THE FACTS OF THIS CASE ARE NOT IN DISPUTE.

4. IT APPEARS THAT THE APPLICANT WAS A PARTY TO A COLLECTIVE AGREEMENT WITH LONDON PURE MILK COMPANY COVERING "ALL EMPLOYEES SAVE AND EXCEPT OFFICE STAFF, MANAGERS AND THOSE ABOVE THE RANK OF MANAGER". THE COLLECTIVE AGREEMENT BECAME EFFECTIVE ON SEPTEMBER 1ST, 1964 AND WAS TO RUN UNTIL SEPTEMBER 1ST, 1966.
5. THE RESPONDENT AND THE INTERVENER ARE PARTIES TO A COLLECTIVE AGREEMENT COVERING "ALL EMPLOYEES" OF THE RESPONDENT.
6. THE RESPONDENT PURCHASED THE PLANT, EQUIPMENT AND GOODWILL OF LONDON PURE MILK COMPANY ON NOVEMBER 1ST, 1965, INCLUDING ITS LIST OF CUSTOMERS WHOM THE RESPONDENT HAS CONTINUED TO SERVE. ON NOVEMBER 2ND, 1965, THE APPLICANT GAVE NOTICE TO THE RESPONDENT, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 47A (2), OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT WITH THE RESPONDENT.
7. THE RESPONDENT, ON NOVEMBER 8TH, 1965, ADVISED THE APPLICANT THAT THE RESPONDENT'S EMPLOYEES WERE BARGAINED FOR BY THE INTERVENER. AT THE HEARING THERE WAS FILED A COPY OF THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND LONDON PURE MILK COMPANY AND A COPY OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER.
8. IT APPEARS FROM THE EVIDENCE THAT ABOUT 40 EMPLOYEES OF LONDON PURE MILK COMPANY WHO WERE REPRESENTED BY THE APPLICANT, WERE TRANSFERRED TO THE OPERATION CARRIED ON BY THE RESPONDENT WHERE THEY WERE INTERMINGLED WITH ABOUT 48 EMPLOYEES WHO WERE REPRESENTED BY THE INTERVENER.
9. HAVING REGARD TO THE AGREED FACTS AND REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE RESPONDENT PURCHASED, WITHIN THE MEANING OF SECTION 47A (1), THE BUSINESS FORMERLY CARRIED ON BY LONDON PURE MILK COMPANY. SUBSEQUENTLY, THE RESPONDENT INTERMINGLED, WITHIN THE MEANING OF SECTION 47A (5), THE EMPLOYEES OF LONDON PURE MILK COMPANY WHO WERE REPRESENTED BY THE APPLICANT WITH EMPLOYEES OF THE RESPONDENT WHO WERE REPRESENTED BY THE INTERVENER.
10. THE BOARD DETERMINES THAT THE INTERMINGLED EMPLOYEES, IN THE CIRCUMSTANCES OF THIS CASE, CONSTITUTE ONE APPROPRIATE BARGAINING UNIT. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN ITS LONDON DIVISION AT LONDON, SAVE AND EXCEPT MANAGERS, ROUTE FOREMEN, PERSONS ABOVE THE RANKS OF MANAGER AND ROUTE FOREMAN AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
11. PURSUANT TO THE PROVISIONS OF SECTION 47A (7) AND FOR THE PURPOSE OF DETERMINING WHICH TRADE UNION SHALL BE THE BARGAINING AGENT FOR THE EMPLOYEES IN THE BARGAINING UNIT, THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.
12. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.

10188-64-M: LOCAL UNION No. 1005 UNITED STEELWORKERS OF AMERICA (APPLICANT)
V. THE STEEL COMPANY OF CANADA LIMITED HILTON WORKS (RESPONDENT).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: D. LEWIS, Q.C., D. BROWN AND A. SHARP
APPEARING FOR THE APPLICANT, C. A. MORLEY, J. B. THOMSON AND V. P. HARRIS
APPEARING FOR THE RESPONDENT.

DECISION OF: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER.

(JULY 28, 1965.)

1. THE APPLICANT, PURSUANT TO SECTION 79(2) OF THE LABOUR RELATIONS ACT, IS REQUESTING THAT THE BOARD DETERMINE WHETHER THE PERSONS LISTED IN THE TWO CATEGORIES BELOW ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

O. H. OPERATING ENGINEERS

ASST. SHIFT ENG. 148' PLATE MILL

G. CARTER
R. W. EWART
H. E. KRITZER
V. NOVIKS
J. C. ROLLO

D. C. HAWKINS
D. R. JORDAN
W. J. PEACH
C. YOUNG

2. THE APPLICANT AND THE RESPONDENT ARE BOUND BY A COLLECTIVE AGREEMENT DATED JANUARY 6, 1965 WHICH REMAINS IN EFFECT UNTIL JULY 31, 1966. THE RECOGNITION SECTION OF THE AGREEMENT PROVIDES THAT THE COMPANY RECOGNIZES THE UNION AS THE CERTIFIED COLLECTIVE BARGAINING AGENCY FOR ALL THE HOURLY AND PRODUCTION EMPLOYEES OF THE COMPANY AT ITS HILTON WORKS WITH THE EXCEPTION OF PERSONS ACTING IN A SUPERVISORY OR CONFIDENTIAL CAPACITY OR HAVING AUTHORITY TO EMPLOY, DISCHARGE OR DISCIPLINE EMPLOYEES. (THERE ARE EXCEPTIONS OF OTHER PERSONS FROM THE BARGAINING UNIT WHICH ARE NOT MATERIAL IN THIS APPLICATION). THE SAME SECTION PROVIDES THAT ANY DIFFERENCE WHICH ARISES BETWEEN THE UNION AND THE COMPANY AS TO WHETHER A PERSON IS IN THE BARGAINING UNIT MAY BE TREATED AS A GRIEVANCE AND DEALT WITH UNDER THE PROCEDURE FOR ADJUSTING GRIEVANCES SET OUT IN ANOTHER SECTION OF THE COLLECTIVE AGREEMENT.

3. THE APPLICANT PURSUANT TO THE TERMS OF THE COLLECTIVE AGREEMENT FILED A "POLICY GRIEVANCE" ON APRIL 19TH, 1965 WITH RESPECT TO THE PERSONS LISTED IN PARAGRAPH 1. (IT APPEARS FROM THE WORDING OF THE "POLICY GRIEVANCE" THAT ON FEBRUARY 23RD, 1965 THE RESPONDENT INFORMED THE APPLICANT THAT EFFECTIVE MARCH 1ST, 1965, THE JOB CLASSIFICATION OF O.H. OPERATING ENGINEER WOULD BE TAKEN OUT OF THE BARGAINING UNIT AND FURTHER THAT PERSONS PERFORMING THE NEW JOB OF ASSISTANT SHIFT ENGINEER 148' PLATE MILL WOULD NOT BE INCLUDED IN THE BARGAINING UNIT). ON THE DATE OF THE HEARING OF THIS APPLICATION THERE HAD BEEN NO SETTLEMENT OF THE GRIEVANCE AND THE ARBITRATION PROCEDURE PROVIDED FOR IN THE AGREEMENT HAD NOT BEEN INSTITUTED.

4. THE ARGUMENTS MADE BY COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENT IN THIS APPLICATION IN ALL RELEVANT RESPECTS ARE THE SAME AS THE ARGUMENTS MADE BY THE PARTIES IN THE CANADIAN CAR FORT WILLIAM DIVISION HAWKER SIDDELEY CANADA LTD. CASE (BOARD FILE NO. 10386-65-M). [SEE PAGE 763 OF THIS REPORT.]

5. ON THE EVIDENCE BEFORE IT AND FOR THE REASONS GIVEN IN THE ABOVE CASE, THE BOARD FINDS THAT A QUESTION HAS ARISEN DURING THE PERIOD OF OPERATION OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES AS TO WHETHER THE PERSONS LISTED IN PARAGRAPH 1 AS O.H. OPERATING ENGINEERS AND ASSISTANT SHIFT ENGINEERS 148¹ PLATE MILL ARE EMPLOYEES FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. THE BOARD ACCORDINGLY FURTHER FINDS THAT THE APPLICANT HAS BROUGHT ITSELF WITHIN THE PROVISIONS OF SECTION 79 (2) AND IS ENTITLED TO THE RELIEF WHICH IT IS SEEKING IN THIS APPLICATION. WE WOULD MENTION THAT IN VIEW OF THE BOARD'S FINDING IN THE CANADIAN CAR FORT WILLIAM DIVISION HAWKER SIDDELEY CANADA LTD. CASE (SUPRA) THAT THE QUESTION AS TO WHETHER A PERSON IS COVERED BY A COLLECTIVE AGREEMENT AND THE QUESTION WHETHER A PERSON IS AN EMPLOYEE FOR THE PURPOSE OF THE LABOUR RELATIONS ACT ARE TWO SEPARATE ISSUES, THE FACT THAT THE APPLICANT HAS PROCEEDED BY WAY OF THE GRIEVANCE PROCEDURE PROVIDED FOR IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES DOES NOT ACT AS A BAR TO THIS APPLICATION.

6. MR. A. A. MORROW, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF THE NAMED PERSONS LISTED IN PARAGRAPH 1.

DECISION OF: BOARD MEMBER H. F. IRWIN. (JULY 28, 1965.)

1. I DISSENT.

2. THIS IS AN APPLICATION UNDER SECTION 79, SUBSECTION (2) OF THE LABOUR RELATIONS ACT. THE SUBSECTION READS AS FOLLOWS:-

(2) IF, IN THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT OR DURING THE PERIOD OF OPERATION OF A COLLECTIVE AGREEMENT, A QUESTION ARISES AS TO WHETHER A PERSON IS AN EMPLOYEE OR AS TO WHETHER A PERSON IS A GUARD, THE QUESTION MAY BE REFERRED TO THE BOARD AND THE DECISION OF THE BOARD THEREON IS FINAL AND CONCLUSIVE FOR ALL PURPOSES.

THE BOARD HAS ALWAYS INTERPRETED THE WORD "EMPLOYEE" IN THE SUBSECTION TO MEAN AN EMPLOYEE FOR THE PURPOSES OF THE ACT.

3. PERSONS NOT DEEMED TO BE EMPLOYEES FOR THE PURPOSES OF THE ACT ARE DEFINED IN SUBSECTIONS (2) AND (3) OF SECTION 1 AND SECTION 2 OF THE ACT WHICH READ AS FOLLOWS:-

1. (2) FOR THE PURPOSES OF THIS ACT, NO PERSON SHALL BE DEEMED TO HAVE CEASED TO BE AN EMPLOYEE BY REASON ONLY OF HIS CEASING TO WORK FOR HIS EMPLOYER AS THE RESULT OF A LOCK-OUT OR STRIKE OR BY REASON ONLY OF HIS BEING DISMISSED BY HIS EMPLOYER CONTRARY TO THIS ACT OR TO A COLLECTIVE AGREEMENT.

(3) FOR THE PURPOSES OF THIS ACT, NO PERSON SHALL BE DEEMED TO BE AN EMPLOYEE,

(A) WHO IS A MEMBER OF THE ARCHITECTURAL, DENTAL, ENGINEERING, LAND SURVEYING,

LEGAL OR MEDICAL PROFESSION ENTITLED
TO PRACTISE IN ONTARIO AND EMPLOYED IN
A PROFESSIONAL CAPACITY; OR

- (B) WHO, IN THE OPINION OF THE BOARD,
EXERCISES MANAGERIAL FUNCTIONS OR IS
EMPLOYED IN A CONFIDENTIAL CAPACITY
IN MATTERS RELATING TO LABOUR RELATIONS.

2. THIS ACT DOES NOT APPLY,

- (A) TO A DOMESTIC EMPLOYED IN A PRIVATE HOME;
- (B) TO A PERSON EMPLOYED IN AGRICULTURE,
HUNTING OR TRAPPING;
- (C) TO A PERSON, OTHER THAN AN EMPLOYEE OF
A MUNICIPALITY OR A PERSON EMPLOYED IN
SILVACULTURE, WHO IS EMPLOYED IN
HORTICULTURE BY AN EMPLOYER WHOSE
PRIMARY BUSINESS IS AGRICULTURE OR
HORTICULTURE;
- (D) TO A MEMBER OF A POLICE FORCE WITHIN THE
MEANING OF THE POLICE ACT;
- (E) TO A FULL-TIME FIRE FIGHTER WITHIN THE
MEANING OF THE FIRE DEPARTMENTS ACT; OR
- (F) TO A TEACHER AS DEFINED IN THE TEACHING
PROFESSION ACT.

4. BEFORE THE BOARD HAS JURISDICTION TO MAKE A DETERMINATION UNDER
SUBSECTION (2) OF SECTION 79 OF THE ACT, A QUESTION MUST HAVE ARISEN BETWEEN
THE PARTIES, WHO ARE BARGAINING FOR A COLLECTIVE AGREEMENT OR DURING THE
OPERATION OF A COLLECTIVE AGREEMENT TO WHICH THE PARTIES ARE BOUND, AS TO
WHETHER A PERSON IS AN EMPLOYEE FOR THE PURPOSES OF THE ACT. IN SUCH
CIRCUMSTANCES, EITHER OF THE PARTIES MAY REFER THE MATTER IN QUESTION TO
THIS BOARD WHOSE DECISION IS FINAL AND BINDING FOR ALL PURPOSES.

5. IN THE INSTANT CASE, THE PARTIES TO THIS PROCEEDING ARE BOUND BY A
COLLECTIVE AGREEMENT DATED JANUARY 6, 1965 AND WHICH REMAINS IN EFFECT UNTIL
JULY 31, 1966. NO VIVA VOCE EVIDENCE WAS ADDUCED AT THE HEARING. THE
FOLLOWING EXHIBITS WERE FILED BY THE RESPONDENT:-

EXHIBIT #1 - COLLECTIVE AGREEMENT DATED JANUARY 6TH, 1965
BETWEEN HILTON WORKS, THE STEEL COMPANY OF
CANADA, LIMITED AND LOCAL UNION No. 1005,
UNITED STEELWORKERS OF AMERICA.

THE RESPONDENT DIRECTED THE BOARD'S ATTENTION TO THE FOLLOWING PROVISIONS
OF THE COLLECTIVE AGREEMENT:-

SECTION 2.01

THE COMPANY RECOGNIZES THE UNION AS THE CERTIFIED COLLECTIVE BARGAINING AGENCY FOR ALL THE HOURLY AND PRODUCTION EMPLOYEES OF THE COMPANY AT ITS HILTON WORKS, BUT EXCEPTING:

- (A) OFFICERS AND OFFICIALS OF THE COMPANY,
- (B) PERSONS ACTING IN A SUPERVISORY OR CONFIDENTIAL CAPACITY OR HAVING AUTHORITY TO EMPLOY, DISCHARGE, OR DISCIPLINE EMPLOYEES,
- (C) POLICEMEN,
- (D) BRICKLAYERS AND MASONS EMPLOYED AS MAINTENANCE MEN,
- (E) PATTERNMAKERS.

SECTION 2.02

THE TERM "EMPLOYEE" OR "EMPLOYEES" AS USED IN THIS AGREEMENT SHALL MEAN ONLY SUCH PERSONS AS ARE INCLUDED IN THE ABOVE-DEFINED BARGAINING UNIT.

SECTION 2.03

ANY DIFFERENCE WHICH ARISES BETWEEN THE UNION AND THE COMPANY AS TO WHETHER A PERSON IS IN THE SAID BARGAINING UNIT MAY BE TREATED AS A GRIEVANCE AND DEALT WITH UNDER THE PROCEDURE FOR ADJUSTING GRIEVANCES SET FORTH IN SECTION 8 HEREOF.

SECTION 6.01

THE CO-OPERATIVE WAGE STUDY (C.W.S.) MANUAL FOR JOB DESCRIPTION, CLASSIFICATION AND WAGE ADMINISTRATION, DATED OCTOBER 1, 1956, (HEREINAFTER REFERRED TO AS "THE MANUAL") IS INCORPORATED IN THIS AGREEMENT AS APPENDIX "A".

SECTION 6.48

THE UNION MAY FILE A GRIEVANCE BEGINNING AT STEP No. 3 ALLEGING THAT THE COMPANY HAS ESTABLISHED A NEW JOB, OR CHANGED THE JOB CONTENT OF AN EXISTING JOB TO THE EXTENT OF ONE FULL JOB CLASS OR MORE, AND HAS FAILED TO DEVELOP AND SUBMIT A NEW DESCRIPTION AND CLASSIFICATION MADE IN SUCH CASE ANY CHANGE IN JOB CLASS SHALL BECOME EFFECTIVE IN ACCORDANCE WITH 6.45 (c), PROVIDED, HOWEVER, THAT RETROACTIVITY SHALL NOT APPLY FOR MORE THAN SIXTY (60) DAYS PRIOR TO THE DATE THE GRIEVANCE WAS FILED AT STEP No. 3.

EXHIBIT #2 - MANUAL FOR JOB DESCRIPTION, CLASSIFICATION AND WAGE ADMINISTRATION, DATED OCTOBER 1, 1956.

SECTION 6.05 OF THE MANUAL READS AS FOLLOWS:-

THE UNION MAY FILE A GRIEVANCE BEGINNING AT STEP NO. 3 ALLEGING THAT THE COMPANY HAS ESTABLISHED A NEW JOB, OR CHANGED THE JOB CONTENT OF AN EXISTING JOB TO THE EXTENT OF ONE FULL JOB CLASS OR MORE, AND HAS FAILED TO DEVELOP AND SUBMIT A NEW DESCRIPTION AND CLASSIFICATION AND IN SUCH CASE ANY CHANGE IN JOB CLASS SHALL BECOME EFFECTIVE IN ACCORDANCE WITH 6.03 (c), PROVIDED HOWEVER THAT RETROACTIVITY SHALL NOT APPLY FOR MORE THAN SIXTY (60) DAYS PRIOR TO THE DATE THE GRIEVANCE WAS FILED AT STEP NO. 3.

EXHIBIT #3 - ORDER OF LABOUR COURT, DATED APRIL 6, 1944.

BY THE TERMS OF THIS ORDER, LOCAL 1005,
UNITED STEELWORKERS OF AMERICA WERE
CERTIFIED FOR THE FOLLOWING UNIT OF
EMPLOYEES:-

THIS COURT DOTH DECLARE THAT THE UNIT OF THE EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR THE PURPOSE OF COLLECTIVE BARGAINING SHALL CONSIST OF ALL THE HOURLY AND PRODUCTION EMPLOYEES AT THE HAMILTON WORKS OF THE RESPONDENT, WITH THE EXCEPTION OF OFFICIALS OF THE COMPANY, POLICEMEN, AND ALL OTHER OFFICERS, OFFICIALS AND PERSONS ACTING IN A SUPERVISORY OR CONFIDENTIAL CAPACITY AND PERSONS HAVING AUTHORITY TO EMPLOY, DISCHARGE OR DISCIPLINE EMPLOYEES, AND BRICKLAYERS AND MASONS EMPLOYED AS MAINTENANCE MEN, BUT INCLUDING IN SUCH UNIT CERTAIN EMPLOYEES WHO ARE EMPLOYED BY THE RESPONDENT FOR THE ACCOUNT OF GENERAL SMELTING COMPANY OF CANADA LIMITED, AND WHO ARE HIRED AND MAY BE DISMISSED BY THE RESPONDENT AND DO TH ORDER THE SAME ACCORDINGLY.

EXHIBIT #4 - GRIEVNACE, DATED APRIL 19, 1965

THE GRIEVANCE READS AS FOLLOWS:-

AT A MEETING HELD ON FEBRUARY 23, 1965, THE COMPANY INFORMED THE UNION THAT, EFFECTIVE MARCH 1, 1965, SOME OF THE EMPLOYEES WHO ARE INCUMBENTS ON THE JOB OF UT.13, OPERATING ENGINEER, JOB CLASS 15, WOULD BE TAKEN OUT OF THE BARGAINING UNIT, THEREFORE MAKING THE JOB OF UT.13 OPERATING ENGINEER PRACTICALLY REDUNDANT.

AT THE SAME MEETING THE COMPANY STATED THAT THE EMPLOYEES WHO WOULD PERFORM THE NEW JOB OF ASSISTANT SHIFT ENGINEER IN THE BOILER ROOM OF THE NEW 148' PLATE MILL, WOULD NOT BE IN THE BARGAINING UNIT, NOR WOULD THIS PLATE MILL JOB BE DESCRIBED AND CLASSIFIED AS A BARGAINING UNIT JOB.

WE THEREFORE GRIEVE THAT THIS ACTION BY THE COMPANY IS IN VIOLATION OF VARIOUS SECTIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE COMPANY AND THE UNION DATED JANUARY 6, 1965.

WE THEREFORE REQUEST THAT THE COMPANY RETURN THESE EMPLOYEES AND THEIR JOBS TO THE BARGAINING UNIT IN ACCORDANCE WITH THE RECOGNITION AND OTHER SECTIONS OF THE COLLECTIVE AGREEMENT.

NO EVIDENCE WAS ADDUCED AT THE HEARING BY THE APPLICANT.

6. IN PARAGRAPH 5 OF THE APPLICATION, THE APPLICANT STATES AS FOLLOWS:-

5. DURING THE PERIOD OF OPERATION OF THE SAID COLLECTIVE AGREEMENT BETWEEN THE ABOVE NOTED PARTIES A QUESTION HAS ARISEN AS TO WHETHER THE FOLLOWING PERSONS ARE EMPLOYEES OF THE RESPONDENT, NAMELY:-

(THE NAMES OF 9 PERSONS AND THEIR RESPECTIVE OCCUPATIONS FOLLOW)
(EMPHASIS ADDED)

7. THERE IS NO EVIDENCE BEFORE THE BOARD THAT A GRIEVANCE HAS ARISEN BETWEEN THE PARTIES AS TO WHETHER THE 9 PERSONS NAMED IN THE APPLICATION ARE EMPLOYEES FOR THE PURPOSES OF THE ACT. ON THE CONTRARY, EXHIBIT #4, SUPRA, WHICH IS A COPY OF THE GRIEVANCE FILED ON APRIL 19, 1965 BY THE APPLICANT UNION WITH THE COMPANY UNDER THE GRIEVANCE PROCEDURE STIPULATED IN THE COLLECTIVE AGREEMENT IN RESPECT OF THE SAME MATTER REFERS TO A MEETING OF THE PARTIES AT WHICH THE RESPONDENT ANNOUNCED TO THE EMPLOYEES THAT CERTAIN EMPLOYEES "WOULD BE TAKEN OUT OF THE BARGAINING UNIT" AND THAT CERTAIN NEW JOB CLASSIFICATIONS "WOULD NOT BE IN THE BARGAINING UNIT".

8. IN CLEAR AND UNAMBIGUOUS LANGUAGE, THE APPLICANT HAS STATED THAT THE ISSUE BETWEEN THE PARTIES IS WHETHER OR NOT CERTAIN EMPLOYEES ARE WITHIN THE BARGAINING UNIT. THIS IS AN ISSUE WHICH THIS BOARD HAS HELD CONTINUOUSLY AND UNRESERVEDLY IS DISTINCT FROM THE QUESTION AS TO WHETHER PERSONS ARE EMPLOYEES FOR THE PURPOSES OF THE ACT AS DEFINED IN SECTION 79(2) THEREOF.

9. THE ONUS IS CLEARLY UPON THE APPLICANT, NOT THE RESPONDENT AS STATED IN THE BOARD'S NOTICE OF HEARING, FORM 7, TO BE CERTAIN THAT EVIDENCE IS ADDUCED AT THE HEARING TO SHOW THAT A QUESTION HAS ARISEN BETWEEN THE PARTIES IN ACCORDANCE WITH THE PROVISIONS OF SECTION 79(2) OF THE ACT. AS THE REQUIRED EVIDENCE WAS NOT SO ADDUCED, THE BOARD LACKS JURISDICTION TO MAKE THE DETERMINATION REQUESTED AND THE APPLICATION MUST BE DISMISSED.

10188-64-M: LOCAL UNION No. 1005 UNITED STEELWORKERS OF AMERICA (APPLICANT)
V. THE STEEL COMPANY OF CANADA LIMITED HILTON WORKS (RESPONDENT).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

DECISION OF: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER.

(OCTOBER 25, 1965.)

1. COUNSEL FOR THE RESPONDENT HAS REQUESTED THAT THE BOARD RECONSIDER ITS DECISION OF JULY 28TH, 1965 IN THIS MATTER. THE BOARD HAS CONSIDERED THE ARGUMENTS ADVANCED BY COUNSEL IN SUPPORT OF THE REQUEST WHICH ARE

CONTAINED IN HIS LETTERS TO THE BOARD DATED AUGUST 5TH AND SEPTEMBER 30TH, 1965. THE BOARD HAS CONSIDERED ALSO THE REPLY OF COUNSEL FOR THE RESPONDENT WHICH IS CONTAINED IN HIS LETTER TO THE BOARD DATED SEPTEMBER 14TH, 1965.

2. COUNSEL FOR THE RESPONDENT SUBMITS THAT THERE IS NO EVIDENCE BEFORE THE BOARD UPON WHICH TO BASE ITS FINDING THAT A QUESTION HAS ARISEN BETWEEN THE PARTIES AS TO WHETHER THE PERSONS NAMED IN THE APPLICATION ARE EMPLOYEES FOR THE PURPOSE OF THE LABOUR RELATIONS ACT.

3. THE RECOGNITION SECTION OF THE COLLECTIVE AGREEMENT IN EXISTENCE BETWEEN THE PARTIES PROVIDES THAT THE COMPANY RECOGNIZES THE UNION AS THE CERTIFIED COLLECTIVE BARGAINING AGENCY FOR ALL HOURLY AND PRODUCTION EMPLOYEES OF THE COMPANY AT ITS HILTON WORKS WITH THE EXCEPTION OF PERSONS ACTING IN A SUPERVISORY OR CONFIDENTIAL CAPACITY OR HAVING AUTHORITY TO EMPLOY, DISCHARGE OR DISCIPLINE EMPLOYEES. (OTHER CLASSIFICATIONS, WHICH ARE NOT HERE MATERIAL, ALSO EXCLUDED FROM THE BARGAINING UNIT). AT THE HEARING OF THIS MATTER ON MAY 12TH, 1965, COUNSEL FOR THE APPLICANT STATED THAT IN FEBRUARY OF THIS YEAR THE RESPONDENT INFORMED THE APPLICANT THAT THE PERSONS NAMED IN THE APPLICATION (LISTED IN PARAGRAPH 1 OF THE BOARD'S DECISION OF JULY 28TH, 1965) IN THE JOB CLASSIFICATIONS OF O. H. OPERATING ENGINEERS AND ASST. SHIFT ENG. 148' PLATE MILL, WHO HAD PREVIOUSLY BEEN INCLUDED IN THE BARGAINING UNIT, WOULD CEASE TO BE IN THE BARGAINING UNIT AS OF MARCH 1ST, 1965. THIS STATEMENT IS IN ACCORD WITH EXHIBIT #4 FILED BY THE RESPONDENT. COUNSEL FOR THE APPLICANT ALSO STATED THAT THE RESPONDENT HAD INFORMED THE APPLICANT THAT THE REASON THAT THE PERSONS CONCERNED WERE REMOVED FROM THE BARGAINING UNIT WAS BECAUSE THEY EXERCISED MANAGERIAL FUNCTIONS. THE APPLICANT CHALLENGED THE EXCLUSION OF THE PERSONS FROM THE ABOVE JOB CLASSIFICATIONS FROM THE BARGAINING UNIT AND FILED A POLICTY GRIEVANCE (EXHIBIT #4) WITH RESPECT TO THEM.

4. IN THE CANADIAN CAR FORT WILLIAM DIVISION HAWKER SIDDELEY CANADA LTD. CASE, BOARD FILE NO. 10386-64-M, THE BOARD RECOGNIZED THAT THE QUESTION AS TO WHETHER A PERSON IS COVERED BY A COLLECTIVE AGREEMENT AND THE QUESTION AS TO WHETHER A PERSON IS AN EMPLOYEE FOR THE PURPOSE OF THE ACT ARE TWO SEPARATE ISSUES. THE BOARD FURTHER RECOGNIZED THAT THE FORMER QUESTION IS PROPERLY ONE FOR DETERMINATION UNDER THE GRIEVANCE AND ARBITRATION PROCEDURES PROVIDED FOR IN THE COLLECTIVE AGREEMENT AND THAT THE LATTER QUESTION IS ONE THAT FALLS WITHIN THE JURISDICTION OF THE BOARD. IT IS COMMON GROUND BETWEEN THE PARTIES THAT A QUESTION HAS ARISEN AS TO WHETHER THE PERSONS IN THE CLASSIFICATIONS CONCERNED ARE COVERED BY THE COLLECTIVE AGREEMENT. ON THE EVIDENCE BEFORE IT THE BOARD FOUND THAT THE QUESTION ALSO HAS ARISEN AS TO WHETHER THE PERSONS IN THE CLASSIFICATIONS OF O. H. OPERATING ENGINEERS AND ASST. SHIFT ENG. 148' PLATE MILL ARE EMPLOYEES FOR THE PURPOSE OF THE ACT.

5. OUR OPINION IS BASED ON THE FOLLOWING CONSIDERATIONS. HAVING REGARD BOTH TO THE REPRESENTATIONS OF THE PARTIES AND THE DESCRIPTION OF THE BARGAINING UNIT CONTAINED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES, IT IS APPARENT THAT THE PERSONS IN THE JOB CLASSIFICATIONS OF O. H. OPERATING ENGINEERS AND ASST. SHIFT ENG. 148' PLATE MILL WERE EXCLUDED FROM THE BARGAINING UNIT BY THE RESPONDENT BECAUSE THE RESPONDENT CONSIDERED THEM TO BE EMPLOYED IN A MANAGERIAL CAPACITY. IN OUR VIEW, WHEN THE APPLICANT CHALLENGED THE ACTION OF THE RESPONDENT IN REMOVING THE PERSONS CONCERNED FROM THE BARGAINING UNIT THE QUESTION AS TO WHETHER THEY ARE EMPLOYEES FOR THE PURPOSE OF THE ACT IMMEDIATELY AROSE. LET US ASSUME, HOWEVER, FOR THE PURPOSE OF

ARGUMENT THAT THE BOARD WERE TO FIND THAT THE PERSONS IN THE ABOVE TWO CLASSIFICATIONS ARE EMPLOYEES FOR THE PURPOSE OF THE ACT. IT IS STILL CONCEIVABLE THAT DESPITE SUCH A FINDING AN ARBITRATOR MIGHT FIND THAT THE SAME PERSONS FALL WITHIN THE EXCEPTION FROM THE BARGAINING UNIT OF "PERSONS ACTING IN A SUPERVISORY OR CONFIDENTIAL CAPACITY OR HAVING AUTHORITY TO EMPLOY, DISCHARGE OR DISCIPLINE EMPLOYEES". THE BOARD'S DETERMINATION UNDER SECTION 1(3)(B) OF THE ACT, NEVERTHELESS, WOULD BY NO MEANS BE AN ACADEMIC EXERCISE. FOR, AS WAS NOTED BY COUNSEL FOR THE APPLICANT A FINDING BY THE BOARD AS TO WHETHER THE PERSONS CONCERNED ARE EMPLOYEES FOR THE PURPOSE OF THE ACT WILL BE A DETERMINING FACTOR FOR THE APPLICANT IN DECIDING WHETHER TO PROCEED TO ARBITRATION ON THE GRIEVANCES ALREADY FILED ON THE ISSUE AS TO WHETHER THESE PERSONS ARE COVERED BY THE COLLECTIVE AGREEMENT. IN OTHER WORDS, WHILE THE TWO QUESTIONS MAY BE DIFFERENT, A DETERMINATION OF THE FORMER QUESTION IS CLEARLY RELATED AND RELEVANT TO ANY DETERMINATION OF THE LATTER QUESTION. WE WOULD POINT OUT THAT BY ITS CAREFUL AVOIDANCE OF ANY ADMISSION OR DENIAL AS TO WHETHER THE PERSONS CONCERNED ARE EMPLOYEES FOR THE PURPOSE OF THE ACT THE RESPONDENT ITSELF APPARENTLY RECOGNIZES THE RELEVANCE OF THE QUESTION. ACCORDINGLY, TO HOLD ON THE EVIDENCE BEFORE US THAT NO QUESTION HAS EVEN ARISEN AS TO WHETHER THE PERSONS IN THE TWO CLASSIFICATIONS, WHICH THE RESPONDENT HAS REMOVED FROM THE BARGAINING UNIT, ARE EMPLOYEES FOR THE PURPOSE OF THE ACT WOULD NOT BE IN ACCORD WITH THE REALITIES OF THE SITUATION IN THE INSTANT CASE.

6. COUNSEL FOR THE RESPONDENT, IN THE ALTERNATIVE, MADE THE FOLLOWING SUBMISSION: THE BOARD IMPROPERLY, AND TO THE PREJUDICE OF THE RESPONDENT, PLACED THE ONUS ON THE RESPONDENT TO ESTABLISH THAT THE APPLICANT IS NOT ENTITLED TO THE RELIEF IT IS SEEKING; SINCE THE APPLICANT ADDUCED NO EVIDENCE THE BOARD MUST HAVE BASED ITS DECISION SOLELY ON THE EVIDENCE ADDUCED BY THE RESPONDENT; THE ONUS WAS PROPERLY ON THE APPLICANT AND HAVING FAILED TO DISCHARGE THAT ONUS, THE APPLICATION MUST FAIL. IT IS CLEAR FROM THE FACTS OUTLINED IN PARAGRAPH 3 THAT IS COMMON GROUND BETWEEN THE PARTIES THAT IN FEBRUARY OF 1965 THE RESPONDENT REMOVED THE PERSONS NAMED IN THIS APPLICATION FROM THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT DURING THE PERIOD OF THE OPERATION OF THAT AGREEMENT. ACCORDINGLY, WE FIND NO MERIT IN THE SUBMISSION OF COUNSEL FOR THE RESPONDENT OUTLINED ABOVE. WHILE IT MAY BE THAT THE WORDING OF THE BOARD'S NOTICE OF HEARING WAS MISLEADING AS TO THE QUESTION OF ONUS, IF INDEED ANY QUESTION OF ONUS ARISES IN THIS PROCEEDING, THE BOARD IN THE CONDUCT OF THE CASE REQUIRED THE APPLICANT TO ESTABLISH ITS ENTITLEMENT TO THE RELIEF IT IS SEEKING AND WE ARE SATISFIED THAT IT HAS DONE SO. IT IS PERHAPS TRITE TO COMMENT THAT THE BOARD IS ENTITLED TO RELY ON ALL THE EVIDENCE BEFORE IT AND TO MAKE FINDINGS ON EVIDENCE ADDUCED BY ONE PARTY WHICH MAY ADVERSELY EFFECT THE INTEREST OF THAT PARTY. WE WOULD FURTHER POINT OUT THAT IT IS APPARENT THAT THE EVIDENCE PRESENTED BY THE RESPONDENT WAS PLACED BEFORE THE BOARD FOR THE PURPOSE OF SUPPORTING ITS OWN POSITION AND NOT TO SATISFY AN ALLEGEDLY IMPROPER ONUS PLACED UPON IT BY THE BOARD.

7. COUNSEL FOR THE RESPONDENT FURTHER SUBMITS THAT IN ARRIVING AT ITS DECISION IN THE INSTANT CASE THE BOARD RELIED ON ITS DECISION IN THE CANADIAN CAR FORT WILLIAM DIVISION HAWKER SIDDELEY CANADA LTD. CASE (SUPRA). COUNSEL ARGUES THAT SINCE THE CASE WAS HEARD SUBSEQUENT TO THE INSTANT APPLICATION THE RESPONDENT DID NOT HAVE AN OPPORTUNITY TO DEAL WITH THE DECISION IN ITS ARGUMENT. THE BOARD BASED ITS DECISION OF JULY 28TH, 1965 ON THE EVIDENCE AND ARGUMENT PRESENTED IN THE INSTANT CASE. THE BOARD MADE REFERENCE TO THE DECISION IN THE CANADIAN CAR FORT WILLIAM DIVISION HAWKER SIDDELEY CANADA LTD. CASE (SUPRA), HOWEVER, BECAUSE OF THE SIMILARITY OF THE

ISSUES, FACTS AND ARGUMENT. (IN THE LATTER CASE, DIFFERENT CONSIDERATIONS APPLIED TO PERSONS IN A JOB CLASSIFICATION OF ENGINEERS-IN-TRAINING, BUT THE SAME CONSIDERATIONS WERE RELEVANT TO THE CLASSIFICATIONS OF ACCOUNTING CLERKS AND PROGRAMERS). NO ARGUMENTS WERE PRESENTED BY THE APPLICANT OR THE RESPONDENT IN THAT CASE, AFFECTING THE BOARD'S DECISION IN THE INSTANT APPLICATION, WHICH THE PRESENT RESPONDENT DID NOT HAVE AN OPPORTUNITY TO MEET. IN ANY EVENT, EVEN IF THERE WERE ANY MERIT IN THE CLAIM OF COUNSEL FOR THE RESPONDENT HE HAS MADE HIS ARGUMENT BASED ON THE CANADIAN CAR FORT WILLIAM DIVISION HAWKER SIDDELEY CANADA LTD. CASE (SUPRA) IN THE REQUEST FOR RECONSIDERATION CONTAINED IN HIS LETTERS OF AUGUST 5TH AND SEPTEMBER 30TH. HAVING CONSIDERED HIS ARGUMENT, WE FIND NO REASON TO ALTER OUR DECISION OF JULY 28TH, 1965.

DECISION OF: BOARD MEMBER H. F. IRWIN. (OCTOBER 25, 1965.)

IN THE ENDORSEMENT OF THE BOARD IN THIS MATTER DATED JULY 28TH, 1965, I DISSENTED FROM THE DECISION OF THE MAJORITY ON THE GROUNDS THAT THERE IS AN ONUS ON THE APPLICANT TO ADDUCE EVIDENCE TO SHOW THAT A QUESTION HAS ARISEN BETWEEN THE PARTIES IN ACCORDANCE WITH THE PROVISIONS OF SECTION 79(2) OF THE ACT AND THAT THE APPLICANT FAILED TO DISCHARGE THAT ONUS. I ACCORDINGLY FOUND THAT THE BOARD LACKED JURISDICTION TO MAKE THE DETERMINATION REQUESTED BY THE APPLICANT AND THAT THE APPLICATION MUST BE DISMISSED. ON THE BASIS OF THE WRITTEN REPRESENTATIONS OF THE PARTIES RECEIVED BY THE BOARD SINCE THAT ISSUANCE OF ITS ENDORSEMENT OF JULY 28TH, I FIND NO REASON TO ALTER MY DECISION OF JULY 28TH, 1965.

10386-65-M: OFFICE EMPLOYEES INTERNATIONAL UNION LOCAL #81 (APPLICANT) v. CANADIAN CAR FORT WILLIAM DIVISION HAWKER SIDDELEY CANADA LTD. (RESPONDENT).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: D. LEWIS, Q.C., FOR THE APPLICANT, B. M. W. PAULIN AND G. B. WEILER, Q.C., APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: (JULY 7, 1965.)

1. THE APPLICANT IS REQUESTING, PURSUANT TO SECTION 79(2) OF THE LABOUR RELATIONS ACT, THAT THE BOARD DETERMINE WHETHER THE PERSONS SET OUT IN SCHEDULE A ATTACHED TO THE APPLICATION ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. SCHEDULE A LISTS THE FOLLOWING NAMES AND JOB CLASSIFICATIONS:

ENGINEERS-IN-TRAINING

M. J. ANWAR
W. H. BRICKNELL
H. K. BUMULLER
D. J. ELKINS
J. G. MACLEOD
J. M. MULLER
J. A. MUNRO
H. C. RALPH
A. J. WILDEY

ACCOUNTING CLERKS

N. LEMISKI
J. E. MCILROY

PROGRAMERS

F. O. JONES
D. C. WORTH

2. THE APPLICANT AND RESPONDENT ARE BOUND BY A COLLECTIVE AGREEMENT EFFECTIVE FROM JANUARY 13TH, 1964 TO AUGUST 31ST, 1965. ITEM 4 IN THE COLLECTIVE AGREEMENT ENTITLED "RECOGNITION AND REPRESENTATION" READS:

THE COMPANY RECOGNIZES OFFICE EMPLOYEES INTERNATIONAL UNION LOCAL #81, DULY CERTIFIED BARGAINING AGENTS BY THE ONTARIO LABOUR RELATIONS BOARD, AS THE SOLE BARGAINING AGENCY IN RESPECT OF THOSE EMPLOYEES IN THE FORT WILLIAM PLANT WHO ARE COVERED BY THIS AGREEMENT.

ITEM 5 OF THE COLLECTIVE AGREEMENT ENTITLED "ELIGIBILITY" READS:

ALL SALARIED EMPLOYEES OF THE FORT WILLIAM PLANT, EXCEPT THOSE LISTED BELOW, ARE ELIGIBLE FOR MEMBERSHIP IN THE UNION AND ARE SUBJECT TO THE TERMS OF THIS AGREEMENT:

- (1) ALL DEPARTMENT HEADS;
- (2) ONE SECRETARY TO EACH DEPARTMENT HEAD;
- (3) ALL FOREMEN AND ALL SUPERVISORS REPORTING DIRECTLY TO A DEPARTMENT HEAD;
- (4) ALL PERSONS EMPLOYED IN A CONFIDENTIAL MANAGEMENT FUNCTION AND CERTAIN EMPLOYEES OTHER THAN GROUP (3) ABOVE WHO ARE EMPLOYED IN A SUPERVISORY OR SALES CAPACITY. A LIST OF THESE EMPLOYEES SHALL BE MUTUALLY AGREED UPON BETWEEN THE COMPANY AND THE UNION PRIOR TO THEIR REMOVAL FROM THE UNION ELIGIBILITY LIST.

ANY OPERATION PRESENTLY BEING PERFORMED BY A SALARY RATED EMPLOYEE WILL NOT BE CHANGED TO AN HOURLY EMPLOYEE FUNCTION UNLESS BY MUTUAL CONSENT.

ITEM 28 OF THE COLLECTIVE AGREEMENT ENTITLED "POLICY GRIEVANCE" READS:

AN ALLEGATION BY EITHER PARTY THAT THE AGREEMENT HAS BEEN MISINTERPRETED OR VIOLATED MAY BE LODGED IN WRITING (LETTER FORM) AS A POLICY GRIEVANCE AND, FAILING SATISFACTORY SETTLEMENT THE POLICY GRIEVANCE MAY THEN BE APPEALED TO ARBITRATION.

3. THE APPLICANT PURSUANT TO ITEM 28 OF THE COLLECTIVE AGREEMENT FILED A "POLICY GRIEVANCE" ON FEBRUARY 3RD, 1964 WITH RESPECT TO TWO PERSONS CATEGORIZED BY THE RESPONDENT AS ENGINEERS-IN-TRAINING AND THE GRIEVANCE SUBSEQUENTLY WAS REFERRED TO ARBITRATION. BY THE AWARD OF THE ARBITRATION BOARD DATED JUNE 29TH, 1964, THE MAJORITY FOUND THAT THE PERSONS IN QUESTION WERE NOT COVERED BY THE COLLECTIVE AGREEMENT AND THE GRIEVANCE WAS DISMISSED.

4. COUNSEL FOR THE RESPONDENT SUBMITS THAT THE PURPOSE OF THIS APPLICATION IS TO HAVE THE BOARD MAKE A DETERMINATION AS TO WHETHER THE PERSONS LISTED IN SCHEDULE A FALL WITHIN THE BARGAINING UNIT DESCRIBED IN ITEM 5 OF THE COLLECTIVE AGREEMENT. THIS HE ALLEGES IS THE REAL ISSUE BETWEEN THE PARTIES. HE ARGUES THAT EVEN IF THE BOARD WERE TO MAKE A

DECISION AS TO WHETHER THE PERSONS IN QUESTION WERE EMPLOYEES IT WOULD NOT RESOLVE THE ISSUE. COUNSEL EMPHASIZED THAT AN AWARD ALREADY HAS BEEN MADE BY A BOARD OF ARBITRATION WITH RESPECT TO THE CATEGORY OF ENGINEERS-IN-TRAINING. HE ARGUES THAT THE APPLICANT IS ATTEMPTING TO UTILIZE THIS BOARD AS AN APPELLATE TRIBUNAL IN AN EFFORT TO UPSET THE FINDING OF THE BOARD OF ARBITRATION. IF THE BOARD WERE TO ACCEDE TO THIS REQUEST, COUNSEL ENVISAGED THE POSSIBILITY OF CONFLICTING DECISIONS BY THE TWO TRIBUNALS, BOTH OF WHICH DECISIONS WOULD BE BINDING ON THE PARTIES. HE ARGUES THAT SUCH A RESULT WOULD BE WHOLLY UNTENABLE. ACCORDINGLY, COUNSEL SUBMITS THAT THE APPLICANT IS NOT ENTITLED TO THE RELIEF WHICH IT IS SEEKING.

5. COUNSEL FOR THE APPLICANT SUBMITS THAT A QUESTION HAS ARISEN DURING THE PERIOD OF THE OPERATION OF THE COLLECTIVE AGREEMENT AS TO WHETHER THE PERSONS LISTED ON SCHEDULE A ABOVE ARE EMPLOYEES. HE ARGUES THAT A DISTINCTION MUST BE MADE BETWEEN THE QUESTION AS TO WHETHER THE PERSONS ARE COVERED BY THE COLLECTIVE AGREEMENT AND THE QUESTION WHETHER THEY ARE EMPLOYEES FOR THE PURPOSE OF THE LABOUR RELATIONS ACT. COUNSEL CONCEDES THAT WITH RESPECT TO THE FORMER QUESTION, IT IS PROPERLY A MATTER TO BE DEALT WITH BY THE GRIEVANCE PROCEDURE AND A BOARD OF ARBITRATION. WITH REGARD TO THE LATTE QUESTION, HOWEVER, HE REFERS TO THE WORDING OF SUBSECTION 1 OF SECTION 79, WHICH READS:

IF, IN THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT OR DURING THE PERIOD OF OPERATION OF A COLLECTIVE AGREEMENT, A QUESTION ARISES AS TO WHETHER A PERSON IS AN EMPLOYEE OR AS TO WHETHER A PERSON IS A GUARD, THE QUESTION MAY BE REFERRED TO THE BOARD AND THE DECISION OF THE BOARD THEREON IS FINAL AND CONCLUSIVE FOR ALL PURPOSES.

HE ARGUES THAT THE ABOVE WORDING MAKES IT ABUNDANTLY CLEAR THAT THE QUESTION AS TO WHETHER A PERSON IS AN EMPLOYEE IS A MATTER FOR DETERMINATION BY THE BOARD. COUNSEL SUBMITS THAT HIS ARGUMENT IS SUPPORTED BY THE WORDING OF SUBSECTION (3)(b) OF SECTION 1, WHICH READS:

FOR THE PURPOSES OF THIS ACT, NO PERSON SHALL BE DEEMED TO BE AN EMPLOYEE, WHO, IN THE OPINION OF THE BOARD, EXERCISES MANAGERIAL FUNCTIONS OR IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS.

HE ARGUES THAT BY THE USE OF THE WORDS "IN THE OPINION OF THE BOARD", ONLY THIS BOARD, AND NOT A BOARD OF ARBITRATION, CAN DECIDE WHO IS AN EMPLOYEE WITHIN THE MEANING OF THE ACT. SINCE THERE ARE TWO SEPARATE AND DISTINCT QUESTIONS, ONE OF WHICH PROPERLY FALLS WITHIN THE JURISDICTION OF A BOARD OF ARBITRATION AND THE OTHER OVER WHICH THIS BOARD HAS EXCLUSIVE JURISDICTION, THERE CAN BE NO CONFLICT BETWEEN THE DECISIONS OF THIS BOARD AND A BOARD OF ARBITRATION.

6. COUNSEL FOR THE RESPONDENT CITED A NUMBER OF EARLIER DECISIONS OF THE BOARD IN SUPPORT OF HIS ARGUMENT AND THE BOARD HAS CONSIDERED THESE CASES IN ARRIVING AT ITS DECISION. IN THE VERA ELKINGTON AND THE WALLAGE BARNES COMPANY LTD. CASE, (1961) CANADIAN LABOUR LAW CASES, 1960-64, ¶16,198, C.L.S. 76-742, AN APPLICATION UNDER SECTION 68(2) (NOW SECTION 79(2)) OF THE LABOUR RELATION ACT WAS MADE BY AN INDIVIDUAL ON HER OWN BEHALF FOR A DECLARATION THAT SHE WAS

AN EMPLOYEE OF THE RESPONDENT COMPANY. THE BOARD DISMISSED THE APPLICATION ON THE GROUNDS THAT SECTION 68(2) WAS DESIGNED TO DEAL WITH QUESTIONS WHICH MAY ARISE BETWEEN THE PARTIES. THE BOARD STATED THAT IT WAS NEVER INTENDED THAT EMPLOYEES SHOULD BE ABLE TO REFER A QUESTION UNDER SECTION 68(2) TO THE BOARD, BUT RATHER THIS WAS LEFT TO ONE OR MORE OF THE PARTIES TO THE COLLECTIVE AGREEMENT. IN THE MORSE CHAIN OF CANADA LIMITED CASE, (1961) CANADIAN LABOUR LAW CASES, VOL. 2, 1960-64, ¶16,225, C.L.S. 76-814, THE BOARD REFUSED TO MAKE A DETERMINATION IN AN APPLICATION MADE UNDER SECTION 79(2) ON THE BASIS THAT AT THE RELEVANT TIME, THERE WAS NO ISSUE BETWEEN THE PARTIES AS TO WHETHER THE PERSON IN QUESTION WAS AN EMPLOYEE, BUT RATHER THE ISSUE WAS WHAT RIGHTS, IF ANY, THAT EMPLOYEE HAD UNDER THE TERMS OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES. IN OUR OPINION, THE CIRCUMSTANCES OF THE ABOVE CASES ARE DISTINGUISHABLE FROM THOSE IN THE INSTANT CASE. REFERENCE WAS ALSO MADE TO THE BOARD'S DECISION IN THE INDUSTRIAL FOOD SERVICES DIVISION OF CANADIAN FOOD PRODUCTS SALES LIMITED CASE, (1962) CANADIAN LABOUR LAW CASES, VOL. 2, 1960-64, ¶16,228, C.L.S. 76-843. WE WOULD POINT OUT THAT THIS WAS AN APPLICATION UNDER SECTION 79(1) OF THE ACT, AND THE DECISION OF THE BOARD WAS BASED ON THAT SUBSECTION.

7. THE BOARD ACCEPTS THE DISTINCTION DRAWN BY COUNSEL FOR THE APPLICANT BETWEEN THE QUESTION AS TO WHETHER A PERSON IS COVERED BY A COLLECTIVE AGREEMENT AND WHETHER A PERSON IS AN EMPLOYEE FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. WE WOULD POINT OUT THAT COUNSEL FOR THE RESPONDENT IN HIS ARGUMENT NOTED, BY WAY OF EXAMPLE, THAT AN EXCEPTION TO THE BARGAINING UNIT IN THE INSTANT CASE IS "ONE SECRETARY TO EACH DEPARTMENT HEAD". HE ADMITS THAT WHILE SUCH PERSONS ARE EXCLUDED FROM THE BARGAINING UNIT THEY MAY BE EMPLOYEES FOR THE PURPOSES OF THE ACT. CONVERSELY, HE MADE REFERENCE TO THE CONSTRUCTION INDUSTRY WHERE HE RECOGNIZED THAT, IN SOME INSTANCES, FOREMEN ARE INCLUDED IN THE BARGAINING UNIT, ALTHOUGH THEY MAY NOT BE EMPLOYEES FOR THE PURPOSE OF THE ACT. IN OUR VIEW, THE ABOVE EXAMPLES SERVE TO ILLUSTRATE THE SEPARATENESS OF THE TWO QUESTIONS. IN FACT, THE BOARD IN THE STEEL CO. OF CANADA LTD. CASE (BOARD FILE NO. 1988-61-M), WHICH WAS AN APPLICATION UNDER SECTION 79(1) OF THE ACT, RECOGNIZED THE DIFFERENCE BETWEEN THE TWO ISSUES. IN THAT CASE, WHILE THE BOARD FOUND ON THE EVIDENCE BEFORE IT THAT THE CREW FOREMEN EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND THEREFORE WERE NOT EMPLOYEES WITHIN THE MEANING OF SECTION 1(3), IT DECLINED TO MAKE ANY DETERMINATION AS TO WHETHER THE CREW FOREMEN WERE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES.

8. IT IS COMMON GROUND BETWEEN THE PARTIES THAT A DETERMINATION OF THE QUESTION AS TO WHETHER A PERSON IS COVERED BY A COLLECTIVE AGREEMENT IS PROPERLY A MATTER FOR A BOARD OF ARBITRATION. WE ACCEPT, HOWEVER, THE ARGUMENT OF COUNSEL FOR THE APPLICANT THAT THE QUESTION AS TO WHETHER A PERSON IS AN EMPLOYEE FALLS WITHIN THE JURISDICTION OF THIS BOARD UNDER SECTION 79(2). SINCE THERE ARE TWO SEPARATE ISSUES WE DO NOT ENVISAGE THE CONFLICT BETWEEN A DECISION OF THE BOARD AND AN AWARD BY A BOARD OF ARBITRATION, SUGGESTED BY COUNSEL FOR THE RESPONDENT.

9. HAVING REGARD TO THE ABOVE CONSIDERATIONS THE BOARD FINDS THAT THE APPLICANT HAS BROUGHT ITSELF WITHIN THE PROVISIONS OF SECTION 79(2) AND IS ENTITLED TO THE RELIEF THAT IT IS SEEKING IN THIS APPLICATION WITH RESPECT TO THE PERSONS LISTED IN SCHEDULE A AS ACCOUNTING CLERKS AND PROGRAMERS, SINCE A QUESTION HAS ARISEN DURING THE PERIOD OF OPERATION OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES AS TO WHETHER THESE PERSONS ARE EMPLOYEES FOR THE PURPOSE OF THE ACT.

10. A DIFFERENT SITUATION, HOWEVER, EXISTS WITH RESPECT TO THE ENGINEERS-IN-TRAINING. IT IS CLEAR THAT ANY QUESTION AS TO WHETHER PERSONS ARE EMPLOYEES MUST ARISE WITH RESPECT TO THE RIGHT OF THE BARGAINING AGENT TO BARGAIN ON THEIR BEHALF, OR BE RELATED TO THEIR RIGHTS UNDER A COLLECTIVE AGREEMENT. SINCE THE BOARD OF ARBITRATION IN ITS AWARD DATED JUNE 29TH, 1964, FOUND ENGINEERS-IN-TRAINING ARE NOT IN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES, IT CANNOT BE SAID THAT A QUESTION HAS ARISEN AT THIS TIME AS TO WHETHER THEY ARE EMPLOYEES AS THEY ARE NOT COVERED BY AND HAVE NO RIGHTS UNDER THE COLLECTIVE AGREEMENT.

11. MR. J. R. HENDERSON, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF, N. LEMISKI, J. E. McILROY, F. O. JONES AND D. C. WORTH.

12. THE APPLICATION, AS IT RELATES TO THE ENGINEERS-IN-TRAINING LISTED IN SCHEDULE A TO THE APPLICATION, IS DISMISSED.

INDEXED ENDORSEMENTS - SECTION 79A

11076-65-M: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (TRADE UNION) V. UNITED LATHING AND PLASTERING CONTRACTORS ASSOCIATION (EMPLOYER).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: S. A. SCHIFF, A. COLLINS, V. MASSAROTTO AND A. BURIGANA FOR THE TRADE UNION, R. D. PERKINS AND D. TINTINALLI FOR THE EMPLOYER.

DECISION OF THE BOARD: (JANUARY 18, 1966.)

1. THIS IS A REFERENCE BY THE MINISTER PURSUANT TO SECTION 79A OF THE ACT. THE QUESTION FOR DETERMINATION BY THE BOARD IS WHETHER A COLLECTIVE AGREEMENT DATED MAY 13TH, 1965 IS IN OPERATION BETWEEN THE TRADE UNION AND THE EMPLOYER BY VIRTUE OF WHICH THE REQUEST FOR THE APPOINTMENT OF A CONCILIATION OFFICER IS UNTIMELY.

2. BY LETTER DATED JANUARY 13TH, 1965, THE TRADE UNION (HEREINAFTER REFERRED TO AS LOCAL 117) GAVE NOTICE TO THE EMPLOYER (HEREINAFTER REFERRED TO AS THE ASSOCIATION) OF ITS DESIRE TO BARGAIN FOR THE RENEWAL OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THEM, THE EXPIRY DATE OF WHICH WAS APRIL 30TH, 1965. THE BARGAINING COMMITTEES OF THE ASSOCIATION AND LOCAL 117 MET ON FEBRUARY 4TH, 11TH, 19TH AND APRIL 22ND IN THE OFFICES OF LOCAL 117 FOR THE PURPOSE OF NEGOTIATING A NEW COLLECTIVE AGREEMENT. THE BARGAINING COMMITTEE FOR THE ASSOCIATION WHICH ATTENDED ALL FOUR MEETINGS CONSISTED OF DONALD TINTINALLI THE CHAIRMAN OF THE ASSOCIATION, TWO OTHER OFFICERS OF THE ASSOCIATION AND ONE OR TWO DIRECTORS OF THE ASSOCIATION. THE BARGAINING COMMITTEE FOR LOCAL 117 WHICH ATTENDED ALL FOUR MEETINGS WAS COMPOSED OF CHARLES IRVINE, A VICE-PRESIDENT OF THE INTERNATIONAL ASSOCIATION OF OPERATIVE PLASTERERS AND CEMENT MASONS, W. K. CLEMENTS, THE BUSINESS MANAGER OF LOCAL 117, A. COLLINS, THE FINANCIAL SECRETARY OF LOCAL 117, AND TWO OR THREE OTHER MEMBERS OF LOCAL 117. IRVINE WAS CHAIRMAN OF THE UNION BARGAINING COMMITTEE.

AT ALL OF THE NEGOTIATING SESSIONS THE ONLY TOPICS DISCUSSED WERE WAGES, VACATION PAY AND THE DURATION OF THE COLLECTIVE AGREEMENT. AT THE CONCLUSION OF THE MEETING OF THE BARGAINING COMMITTEES ON APRIL 22ND NO AGREEMENT HAD BEEN REACHED AND NO FURTHER MEETINGS WERE ARRANGED BETWEEN THE PARTIES.

3. SOME TIME EARLY IN MAY OF 1965, IRVINE COMMUNICATED WITH TINTINALLI AND ARRANGED A FURTHER MEETING ON MAY 25TH AT THE OFFICES OF THE ASSOCIATION. PRIOR TO THAT MEETING, HOWEVER, THERE WAS A MEMBERSHIP MEETING OF LOCAL 117 ON MAY 18TH. AT THAT MEETING IRVINE INFORMED THE MEMBERSHIP THAT HE HAD RECEIVED THE LAST OFFER FROM THE ASSOCIATION. IRVINE SAID THAT THE OFFER WAS A TWO YEAR AGREEMENT WITH A 15¢ AN HOUR INCREASE ON MAY 1ST, 1965, A FURTHER 15¢ AN HOUR INCREASE ON MAY 1ST, 1966 AND AN INCREASE IN VACATION PAY TO 4 PER CENT AS OF JULY 1ST, 1965. (NO SUCH OFFER, IN FACT, HAD BEEN MADE TO IRVINE BY THE ASSOCIATION). THE MEMBERSHIP AGREED TO ACCEPT THESE TERMS. ON THAT OCCASION IRVINE DID NOT INFORM THE MEMBERSHIP OF LOCAL 117 OF THE MEETING THAT HE HAD ARRANGED WITH THE ASSOCIATION ON MAY 25TH.

4. AT THE MEETING ON MAY 25TH THE ASSOCIATION WAS REPRESENTED BY ITS USUAL BARGAINING COMMITTEE BUT IRVINE WAS THE ONLY PERSON PRESENT REPRESENTING LOCAL 117. IRVINE INFORMED THE ASSOCIATION BARGAINING COMMITTEE THAT LOCAL 117 WOULD NOT ACCEPT LESS THAN A TWO YEAR AGREEMENT WITH A 15¢ AN HOUR INCREASE ON MAY 1ST, 1965, A FURTHER 15¢ AN HOUR INCREASE ON MAY 1ST, 1966 AND A VACATION PAY INCREASE FROM 2 TO 4 PER CENT AS OF JULY 1ST, 1965. AT THAT POINT IRVINE PRODUCED FOUR COPIES OF A MEMORANDUM ON HIS OWN STATIONERY AS VICE-PRESIDENT OF THE INTERNATIONAL ASSOCIATION WHICH READ AS FOLLOWS:

MAY 13TH 1965.

IT IS AGREED BY THE SIGNATURES BELOW OF THE DIRECTOR'S OF THE UNITED LATHING AND PLASTERING CONTRACTORS ASSOCIATION, ON BEHALF OF THEIR MEMBERS (NAMES ATTACHED) THAT THEY WILL PAY ALL PLASTERERS IN THEIR EMPLOY EFFECTIVE MAY 1ST, 1965 \$3.15 PER HOUR.
EFFECTIVE MAY 1ST, 1966 \$3.30 PER HOUR.

IT IS ALSO AGREED THAT THE VACATION PAY RATE WILL BE 4% OF GROSS EARNINGS, EFFECTIVE JULY 1ST, 1965.

IRVINE ALSO PRODUCED FOUR COPIES OF A SECOND PAGE OF HIS OWN STATIONERY WHICH LISTED THE MEMBERS OF THE ASSOCIATION. THE ASSOCIATION BARGAINING COMMITTEE INFORMED IRVINE THAT IT WOULD ACCEPT THE TERMS OF HIS OFFER EXCEPT THAT THE ASSOCIATION WAS ONLY PREPARED TO GIVE A 10¢ AN HOUR INCREASE ON MAY 1ST, 1965. IRVINE THEN PROPOSED THAT THE ASSOCIATION GRANT A 15¢ AN HOUR INCREASE AS OF MAY 1ST, 1965 BUT IN RETURN THE CHECK OFF OF UNION DUES PAID BY THE EMPLOYERS AS PROVIDED IN THE PREVIOUS COLLECTIVE AGREEMENT WOULD BE REDUCED FROM 5¢ TO 3¢ AND THE SUPPLEMENTARY UNEMPLOYMENT BENEFIT FUND CONTRIBUTION PAID BY THE EMPLOYERS WOULD BE REDUCED FROM 8¢ TO 5¢. THE ASSOCIATION BARGAINING COMMITTEE ACCEPTED THE REVISED TERMS AS PROPOSED BY IRVINE.

5. TINTINALLI THEN PRODUCED A NUMBER OF COPIES OF THE PREVIOUS COLLECTIVE AGREEMENT BETWEEN THE PARTIES WHICH EXPIRED ON APRIL 30TH, 1965. THESE COPIES WERE NOT DATED OR EXECUTED BY REPRESENTATIVES OF THE PARTIES. TINTINALLI GAVE TWO OF THE "BLANK" COPIES OF THAT DOCUMENT TO IRVINE AND TINTINALLI AND EACH MEMBER OF THE ASSOCIATION BARGAINING COMMITTEE HAD ONE

COPY OF THE DOCUMENT. THE MEMBERS OF THE ASSOCIATION BARGAINING COMMITTEE AND IRVINE PROCEEDED TO GO THROUGH EACH OF THE PROVISIONS OF THE PREVIOUS COLLECTIVE AGREEMENT AND MADE CHANGES IN THE DURATION, TERMINATION AND WAGE CLAUSES OF THE PREVIOUS AGREEMENT IN ACCORDANCE WITH THE UNDERSTANDING THAT HAD JUST BEEN REACHED BETWEEN THE ASSOCIATION AND IRVINE. MORE PARTICULARLY, TINTINALLI, ON HIS "BLANK" COPY OF THE PREVIOUS AGREEMENT, MADE CHANGES IN HIS OWN HANDWRITING IN "PEN AND INK" IN THE DURATION CLAUSE TO SHOW THE EXPIRY DATE AS APRIL 30TH, 1967 AND HE INSERTED THE SAME DATE IN THE TERMINATION CLAUSE. TINTINALLI ALSO CHANGED THE WAGE RATE OF \$3.00 AN HOUR SHOWN IN THE PREVIOUS AGREEMENT TO "\$3.15--1 MAY/65" AND "\$3.30--1 MAY/66". HE FURTHER ALTERED THE PROVISION DEALING WITH CHECK OFF OF UNION DUES AND SUPPLEMENTARY UNEMPLOYMENT BENEFIT FUND CONTRIBUTION SO THAT THE FACE OF THE DOCUMENT INDICATES, ALTHOUGH NOT WITH ENTIRE CLARITY, THAT THESE AMOUNTS ARE REDUCED FROM 5¢ TO 3¢ AND 8¢ TO 5¢ RESPECTIVELY, AND THAT THE VACATION PAY IS INCREASED FROM 2 PER CENT TO 4 PER CENT.

6. HAVING CONSIDERED ALL OF THE TERMS OF THE PREVIOUS COLLECTIVE AGREEMENT EACH OF THE MEMBERS OF THE ASSOCIATION BARGAINING COMMITTEE AND IRVINE PLACED THEIR SIGNATURES UPON THE FIRST PAGE OF THE MEMORANDUM PREPARED BY IRVINE DATED MAY 13TH, 1965 QUOTED IN PARAGRAPH 4. TINTINALLI THEREUPON STAPLED AN EXECUTED COPY OF THIS PAGE TOGETHER WITH THE SECOND PAGE LISTING THE MEMBERS OF THE ASSOCIATION TO THE COPY OF THE PREVIOUS COLLECTIVE AGREEMENT IN WHICH HE HAD MADE THE "PEN AND INK" CHANGES REFERRED TO ABOVE. HE ALSO STAPLED ANOTHER EXECUTED COPY OF IRVINE'S TWO-PAGE MEMORANDUM TO A "BLANK" COPY OF THE PREVIOUS COLLECTIVE AGREEMENT. NO "PEN AND INK" CHANGES APPEAR IN THIS COPY OF THE COLLECTIVE AGREEMENT. TINTINALLI TESTIFIED THAT IRVINE ALSO ATTACHED TWO EXECUTED COPIES OF HIS MEMORANDUM OF MAY 13TH AND THE ACCOMPANYING LIST OF ASSOCIATION MEMBERS TO TWO COPIES OF THE "BLANK" COLLECTIVE AGREEMENT IN HIS POSSESSION. TINTINALLI DID NOT SEE WHAT "PEN AND INK" CHANGES IRVINE HAD MADE IN HIS COPIES OF THE PREVIOUS COLLECTIVE AGREEMENT. IRVINE THEN LEFT THE MEETING TAKING WITH HIM HIS TWO COPIES OF THE STAPLED DOCUMENT. NO REFERENCE WHATEVER WAS MADE TO ANY RATIFICATION OF THE AGREEMENT BY THE MEMBERSHIP OF LOCAL 117. ALTHOUGH TINTINALLI DID NOT APPEAR TO BE ENTIRELY CERTAIN HE TESTIFIED THAT IRVINE TELEPHONE HIM WITHIN A FEW DAYS AND SAID THAT THE MEMBERS OF LOCAL 117 HAD APPROVED THE AGREEMENT. (THE AGREEMENT, IN FACT, HAD NOT BEEN APPROVED BY THE MEMBERSHIP OF LOCAL 117 DURING THE INTERVENING PERIOD).

7. WITHIN A FEW DAYS OF THE MAY 25TH MEETING TINTINALLI INFORMED THE MEMBERS OF THE ASSOCIATION OF THE AGREEMENT REACHED WITH IRVINE AND DIRECTED THEM TO COMPLY WITH THE TERMS THEREOF RETROACTIVE TO MAY 1ST, 1965. TOWARDS THE END OF MAY, A. COLLINS, THE FINANCIAL SECRETARY OF LOCAL 117, RECEIVED IN THE MAIL FROM IRVINE A SINGLE COPY OF HIS MEMORANDUM OF MAY 13TH BEARING HIS SIGNATURE AND THOSE OF THE ASSOCIATION BARGAINING COMMITTEE MEMBERS. SOME TIME LATE IN JUNE COLLINS RECEIVED FROM IRVINE STENCILS OF A COLLECTIVE AGREEMENT WHICH INCORPORATED THE CHANGES AGREED UPON BY THE ASSOCIATION AND IRVINE AT THE MEETING ON MAY 25TH INCLUDING THE DEDUCTION IN THE AMOUNT OF CHECK OFF AND THE SUPPLEMENTARY UNEMPLOYMENT BENEFIT FUND CONTRIBUTION PAID BY THE EMPLOYERS. THE NEXT REGULAR MEETING OF LOCAL 117 FOLLOWING COLLINS'S RECEIPT OF THE STENCILLED COLLECTIVE AGREEMENT TOOK PLACE ON JULY 13TH. AT THAT MEETING MEMBERS OF LOCAL 117 ASKED IRVINE FOR AN EXPLANATION OF THE AGREEMENT WHICH HE HAD NEGOTIATED ON MAY 25TH INCLUDING THE CHANGES IN THE CHECK OFF OF DUES AND THE SUPPLEMENTARY UNEMPLOYMENT BENEFIT FUND CONTRIBUTION

IRVINE OUTLINED THE TERMS OF THE AGREEMENT HE HAD NEGOTIATED BUT STATED THAT SINCE THE AGREEMENT HAD NOT BEEN SIGNED BY ANY OF THE OFFICERS OF LOCAL 117 IT WAS NOT A BINDING CONTRACT AND THAT ACCORDINGLY THE MEMBERSHIP COULD ACCEPT OR REJECT THE AGREEMENT. BY A STANDING VOTE THE AGREEMENT WAS REJECTED BY THE MEMBERSHIP. AT A FURTHER SPECIAL GENERAL MEETING OF LOCAL 117 HELD ON JULY 18TH THE MEMBERSHIP FORMALLY REJECTED THE AGREEMENT NEGOTIATED BY IRVINE IN A SECRET BALLOT VOTE. ON JULY 22ND TINTINALLI AND OTHER MEMBERS OF THE ASSOCIATION MET WITH OFFICERS AND REPRESENTATIVES OF LOCAL 117. AT THAT MEETING THE OFFICERS OF LOCAL 117 INFORMED THE ASSOCIATION THAT THEY WERE NOT SATISFIED WITH THE TERMS OF THE AGREEMENT SIGNED BY IRVINE AND THAT IRVINE HAD NOT BEEN AUTHORIZED TO EXECUTE A COLLECTIVE AGREEMENT ON BEHALF OF LOCAL 117 AND THAT ACCORDINGLY THE AGREEMENT WAS NOT BINDING UPON THE UNION. THE OFFICERS OF LOCAL 117 AGAIN REITERATED THEIR POSITION WITH RESPECT TO THE AGREEMENT EXECUTED BY IRVINE AT A MEETING WITH MEMBERS OF THE ASSOCIATION ON SEPTEMBER 29TH. ON BOTH THESE OCCASIONS THE ASSOCIATION TOOK THE POSITION THAT A VALID COLLECTIVE AGREEMENT HAD BEEN EXECUTED BY IRVINE WHICH AS BINDING ON LOCAL 117. LOCAL 117 THEREUPON MADE APPLICATION TO THE MINISTER TO APPOINT A CONCILIATION OFFICER ON OCTOBER 19TH, 1965.

8. COUNSEL FOR LOCAL 117 SUBMITS THAT THE FORM OF THE PURPORTED COLLECTIVE AGREEMENT EXECUTED BY IRVINE AND THE ASSOCIATION DOES NOT MEET THE REQUIREMENTS OF A COLLECTIVE AGREEMENT AS DEFINED IN SECTION 1(1)(c) OF THE LABOUR RELATIONS ACT AND, THEREFORE, IS A NULLITY. THE EVIDENCE THAT THE TERMS OF THE STENCILLED FORM OF COLLECTIVE AGREEMENT PROVIDED BY IRVINE TO COLLINS WAS THE SAME AS THE TERMS OF THE DOCUMENT FILED WITH THE BOARD AS EXHIBIT #2, WHICH BEARS THE "PEN AND INK" CHANGES MADE BY TINTINALLI, MAKES IT CLEAR THAT THERE WAS A COMPLETE MEETING OF MINDS BETWEEN IRVINE AND THE ASSOCIATION BARGAINING COMMITTEE ON THE NEW AGREEMENT BETWEEN THEM. FURTHER, WHILE IRVINE'S MEMORANDUM OF MAY 13TH, 1965 DOES NOT BY REFERENCE INCORPORATE THE ATTACHED PREVIOUS COLLECTIVE AGREEMENT, THE "PEN AND INK" AMENDMENTS TO THE AGREEMENT INCORPORATE ALL OF THE TERMS AND CONDITIONS OF EMPLOYMENT SET OUT IN THE MEMORANDUM. ALSO, WHILE THE MEMORANDUM OF MAY 13TH DOES NOT REFER TO LOCAL 117 AS BEING A PARTY TO THE AGREEMENT, LOCAL 117 APPEARS AS ONE OF THE PARTIES TO THE ATTACHED COLLECTIVE AGREEMENT AS AMENDED. FINALLY, HAVING REGARD TO THE EVIDENCE RELATING TO THE MANNER IN WHICH THE MEMORANDUM AND THE AGREEMENT WERE STAPLED TOGETHER, WE ARE SATISFIED THAT THE SIGNATURES THAT APPEAR ON THE MEMORANDUM ARE IN EXECUTION OF THE WHOLE DOCUMENT. AS THE BOARD HAS STATED IN PREVIOUS DECISIONS, A COLLECTIVE AGREEMENT NEED NOT BE A FORMAL AGREEMENT; SO LONG AS THE INTENT OF THE PARTIES INDICATES THAT A DOCUMENT EMBODIES THE TERMS WHICH ARE TO GOVERN THEIR RELATIONSHIP, THE BOARD HAS BEEN MOST RELUCTANT TO HOLD THAT SUCH A DOCUMENT IS NOT A COLLECTIVE AGREEMENT. (SEE FOUNDATION COMPANY OF CANADA CASE (1957) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-1959, ¶16,078, (1957) C.L.S. 76-555; BEACH FOUNDRY CASE (1945) D.L.S. 7-1201). IF IT WAS NECESSARY FOR THE BOARD TO BE CONCERNED WITH THE FORM OF THE DOCUMENT EXECUTED BY IRVINE AND THE ASSOCIATION, FILED AS EXHIBIT #2, WE WOULD BE PREPARED TO FIND THAT IT COMPLIES WITH THE DEFINITION OF A COLLECTIVE AGREEMENT AS DEFINED IN SECTION 1(1)(c) OF THE LABOUR RELATIONS ACT.

9. COUNSEL FOR LOCAL 117 FURTHER ARGUES THAT IRVINE, IN FACT, DID NOT HAVE THE AUTHORITY TO SIGN A COLLECTIVE AGREEMENT ON BEHALF OF LOCAL 117. THERE IS NOTHING IN THE CONSTITUTION OF THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION WHICH GIVES AUTHORITY TO A VICE-PRESIDENT TO EXECUTE

A COLLECTIVE AGREEMENT WHICH IS BINDING ON A LOCAL OF THE INTERNATIONAL ASSOCIATION. FURTHER, THE EVIDENCE IS THAT, WHILE IRVINE WAS THE CHAIRMAN OF THE BARGAINING COMMITTEE OF LOCAL 117, AT NO TIME DID THE MEMBERSHIP OF THE LOCAL BY RESOLUTION OR OTHERWISE AUTHORIZE IRVINE TO NEGOTIATE OR EXECUTE A COLLECTIVE AGREEMENT BY HIMSELF ON THEIR BEHALF. WHILE THE APPROVAL OF THE MEMBERSHIP OF MAY 18TH, 1965 TO THE FINAL OFFER OF THE ASSOCIATION AS ALLEGED BY IRVINE MIGHT BE INTERPRETED AS GIVING IRVINE AUTHORITY TO EXECUTE A COLLECTIVE AGREEMENT ON BEHALF OF LOCAL 117 IN THE TERMS APPROVED AT THE MEETING, THE BOARD FINDS THAT IRVINE DID NOT HAVE ACTUAL AUTHORITY TO BIND LOCAL 117 TO THE COLLECTIVE AGREEMENT WHICH HE ENTERED INTO WITH THE ASSOCIATION.

10. WHILE THE BOARD FINDS THAT IRVINE DID NOT IN FACT HAVE THE AUTHORITY TO SIGN A COLLECTIVE AGREEMENT WHICH WAS BINDING ON LOCAL 117 AND ALTHOUGH HE DID NOT CLAIM IN SO MANY WORDS THAT HE HAD SUCH AUTHORITY, ON ALL THE EVIDENCE RELATING TO HIS CONDUCT AT THE MEETING WITH THE ASSOCIATION BARGAINING COMMITTEE ON MAY 25TH, WE ARE SATISFIED THAT IRVINE DID HOLD HIMSELF OUT AS HAVING AUTHORITY TO SIGN A COLLECTIVE AGREEMENT ON BEHALF OF LOCAL 117. THE QUESTION REMAINS, HOWEVER, AS TO WHETHER THE ASSOCIATION WAS ENTITLED TO RELY ON IRVINE'S OSTENSIBLE AUTHORITY.

11. IN ORDER TO MAKE A DETERMINATION ON THIS QUESTION, THE BOARD HAS CONSIDERED THE ENTIRE COLLECTIVE BARGAINING RELATIONSHIP BETWEEN THE PARTIES WHICH GOES BACK TO 1957. DURING THE INTERVENING PERIOD OF EIGHT YEARS, LOCAL 117 AND THE ASSOCIATION ENTERED INTO FOUR COLLECTIVE AGREEMENTS PRIOR TO NEGOTIATIONS FOR THE COLLECTIVE AGREEMENT IN DISPUTE. IN THE NEGOTIATION OF ALL FOUR AGREEMENTS IRVINE WAS THE CHAIRMAN OF THE UNION BARGAINING COMMITTEE AS HE WAS IN THE MOST RECENT NEGOTIATIONS. IN ALL OF THE EARLIER NEGOTIATION BOTH COLLINS, CLEMENTS AND TWO OR THREE OTHER MEMBERS OF LOCAL 117 HAD BEEN ON THE UNION NEGOTIATING COMMITTEE AS IN THE MOST CURRENT NEGOTIATIONS. THE WHOLE OF THE BARGAINING COMMITTEE OF LOCAL 117 WAS PRESENT, HOWEVER, AT ALL OF THE NEGOTIATION MEETINGS INCLUDING THOSE AT WHICH THE COLLECTIVE AGREEMENTS WERE EXECUTED BY THE PARTIES. FURTHER, OFFICERS OF LOCAL 117 AND MOST OFTEN COLLINS AND CLEMENTS EXECUTED ALL OF THE PREVIOUS COLLECTIVE AGREEMENTS ON BEHALF OF LOCAL 117. WHILE THERE IS VIVA VOCE EVIDENCE THAT IRVINE WAS ALSO A SIGNATORY TO AT LEAST ONE OF THE EARLIER AGREEMENTS, THE DOCUMENTARY EVIDENCE ON FILE DOES NOT SUPPORT THIS TESTIMONY. (WE WOULD MENTION, HOWEVER, THAT AN ORIGINAL EXECUTED COPY OF THE AGREEMENT WHICH EXPIRED ON APRIL 30TH, 1965 WAS NOT FILED WITH THE BOARD). IN OTHER WORDS, THE ONLY MEETING IN THE COURSE OF THE NEGOTIATION OF FOUR COLLECTIVE AGREEMENTS AND INCLUDING THE MOST CURRENT NEGOTIATIONS, AT WHICH THE WHOLE OF THE UNION BARGAINING COMMITTEE WAS NOT IN ATTENDANCE, WAS THE MEETING OF MAY 25TH. MOREOVER, IT APPEARS THAT IRVINE HAS NEVER BEEN A SIGNATORY TO ANY OF THE PREVIOUS COLLECTIVE AGREEMENTS OR AT BEST HE WAS A SIGNATORY ON ONE OCCASION, BUT HE SIGNED TOGETHER WITH OFFICERS OF LOCAL 117.

12. HAVING REGARD TO THE ENTIRE HISTORY OF THE BARGAINING RELATIONSHIP BETWEEN THE PARTIES, WE FAIL TO APPRECIATE WHY THE ASSOCIATION BARGAINING COMMITTEE WAS PREPARED, WITHOUT QUESTION, TO ACCEPT THAT IRVINE HAD AUTHORITY TO SIGN A COLLECTIVE AGREEMENT ON BEHALF OF LOCAL 117 WHICH WAS BINDING ON ITS MEMBERS. THIS IS PARTICULARLY SO WHEN ONE CONSIDERS THAT IRVINE ANNOUNCED TO THE ASSOCIATION BARGAINING COMMITTEE THE MINIMUM DEMANDS OF LOCAL 117 AND THEN PROMPTLY PROCEEDED TO NEGOTIATE AND SIGN A COLLECTIVE AGREEMENT FOR LESS. SURELY WHEN IRVINE AGREED AT THE MEETING TO NEW TERMS, WHICH HAD NOT BEEN THE

SUBJECT MATTER OF NEGOTIATION AT ANY OF THE PREVIOUS FOUR MEETINGS OF THE BARGAINING COMMITTEE AND WHICH DECREASED THE FRINGE BENEFITS WHICH THE LOCAL HAD PREVIOUSLY ENJOYED, IT WAS INCUMBENT UPON THE ASSOCIATION TO QUESTION IRVINE'S AUTHORITY TO EXECUTE AN AGREEMENT FOR LOCAL 117 BASED ON THESE NEW TERMS. THE ASSOCIATION, HOWEVER, AT NO TIME DURING THE MEETING OF MAY 25TH QUESTIONED OR REQUIRED PROOF OF IRVINE'S AUTHORITY TO NEGOTIATE THE ABOVE CHANGES TO THE COLLECTIVE AGREEMENT NOR DID IT MAKE ANY INQUIRY AS TO WHETHER IT WAS NECESSARY FOR THE MEMBERSHIP OF LOCAL 117 TO RATIFY THE AGREEMENT. IF, AND AS IT APPEARS, DESPITE ALL THE UNUSUAL CIRCUMSTANCES, THE ASSOCIATION BARGAINING COMMITTEE BELIEVED IRVINE HAD AUTHORITY TO SIGN AN AGREEMENT FOR LOCAL 117, IN OUR VIEW, SUCH BELIEF WAS WHOLLY UNWARRANTED. THE BOARD ACCORDINGLY FINDS THAT THE ASSOCIATION WAS NOT ENTITLED TO RELY ON THE OSTENSIBLE AUTHORITY OF IRVINE TO SIGN A COLLECTIVE AGREEMENT ON BEHALF OF LOCAL 117 AND THAT THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES DATED MAY 13TH, 1965 IS NOT BINDING ON LOCAL 117.

13. WE WISH TO EMPHASIZE THAT NOTHING STATED IN OUR DECISION IS TO BE INTERPRETED AS CONDONING IN ANY WAY THE CONDUCT OF IRVINE. THE EVIDENCE MAKES IT CLEAR THAT IRVINE INTENTIONALLY PRACTISED DECEIT ON BOTH THE MEMBERSHIP OF LOCAL 117 AND THE ASSOCIATION BARGAINING COMMITTEE.

14. THE ANSWER TO THE BOARD TO THE QUESTION IN THE REFERENCE FROM THE MINISTER, THEREFORE, IS THAT THE APPLICATION FOR CONCILIATION SERVICES MADE BY LOCAL 117 IS TIMELY.

11113-65-M: INTERNATIONAL HOD CARRIERS' BUILDING & COMMON LABOURERS UNION OF AMERICA, LOCAL UNION 697 (TRADE UNION) v. TAYLOR WOODROW INSTALLATIONS LIMITED (EMPLOYER).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: D. W. FORGIE APPEARING FOR THE TRADE UNION, AND F. G. PUMPLE APPEARING FOR THE EMPLOYER.

DECISION OF: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE. (JANUARY 6, 1966.)

THIS IS A REFERENCE TO THE BOARD BY THE MINISTER OF LABOUR, PURSUANT TO SECTION 79A OF THE ACT, OF THE QUESTION WHETHER TIMELY NOTICE TO BARGAIN WAS GIVEN BY THE TRADE UNION TO THE EMPLOYER PURSUANT TO SECTION 40 OF THE ACT.

A COLLECTIVE AGREEMENT WAS ENTERED INTO BETWEEN THE EMPLOYER AND THE TRADE UNION ON JUNE 22, 1964. ARTICLE XVI OF THAT AGREEMENT PROVIDES AS FOLLOWS:

THE CONTRACTOR AND THE UNION AGREE ONE WITH THE OTHER THAT THEY WILL ABIDE BY THE ARTICLES OF THIS AGREEMENT FROM: JUNE 22ND, 1964 TO JUNE 22ND, 1965 INCLUSIVE, AND FROM YEAR TO YEAR THEREAFTER, UNLESS EITHER PARTY DESIRES TO CHANGE THIS AGREEMENT, IN WHICH CASE THE PARTY DESIRING TO CHANGE SHALL NOTIFY THE OTHER PARTY IN WRITING AT LEAST SIXTY (60) PRIOR TO JUNE 22ND, 1965, THAT SUCH IS ITS' DESIRE.

THE EVIDENCE IS THAT ON APRIL 15, 1965, (WHICH WAS WITHIN THE PERIOD DEFINED IN THE COLLECTIVE AGREEMENT WHEN TIMELY NOTICE OF DESIRE TO CHANGE THE AGREEMENT COULD BE GIVEN), THE TRADE UNION CAUSED A LETTER CONTAINING THE PROVISIONS OF SUCH A NOTICE TO BE SENT BY REGISTERED MAIL TO THE EMPLOYER. THE EVIDENCE IS FURTHER, THAT SUCH A LETTER WAS NOT RECEIVED BY THE EMPLOYER. THE TRADE UNION MADE NO ENQUIRIES, EITHER OF THE POST OFFICE OR OF THE EMPLOYER, REGARDING THE DELIVERY OR OTHERWISE OF THE LETTER, NOR DID IT MAKE ANY ATTEMPT TO COMMUNICATE FURTHER WITH THE EMPLOYER UNTIL THE APPLICATION FOR CONCILIATION SERVICES WAS MADE ON SEPTEMBER 25, 1965, SOME SIX MONTHS AFTER THE MAILING OF THE NOTICE.

SECTION 85(1) OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:-

FOR THE PURPOSES OF THIS ACT AND OF ANY PROCEEDINGS TAKEN UNDER IT, ANY NOTICE OR COMMUNICATION SENT THROUGH HER MAJESTY'S MAILS SHALL BE PRESUMED, UNLESS THE CONTRARY IS PROVED, TO HAVE BEEN RECEIVED BY THE ADDRESSEE IN THE ORDINARY COURSE OF MAIL.

IN THE INSTANT CASE, THE UNCHALLENGED EVIDENCE IS THAT THE LETTER IN QUESTION WAS NOT RECEIVED BY THE ADDRESSEE. THUS THE PRESUMPTION PROVIDED FOR BY SECTION 85 CANNOT BE RELIED ON BY THE TRADE UNION. THE COLLECTIVE AGREEMENT MAKES NO SPECIAL PROVISION AS TO THE MANNER IN WHICH NOTICE MAY BE GIVEN.

HAVING REGARD TO ALL OF THE CIRCUMSTANCES, THE BOARD CONCLUDES THAT THE TRADE UNION HAS NOT COMPLIED WITH THE REQUIREMENT OF THE COLLECTIVE AGREEMENT THAT A PARTY DESIRING TO CHANGE THE COLLECTIVE AGREEMENT "SHALL NOTIFY" THE OTHER PARTY WITHIN THE TIME SPECIFIED IN THE AGREEMENT.

THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER IS "NO".

DECISION OF: BOARD MEMBER G. RUSSELL HARVEY. (JANUARY 6, 1966.)

I DISSENT. THE APPLICANT UNION PLACED IN EVIDENCE A COPY OF POST OFFICE REGISTRATION RECEIPT 8665 DATED APRIL 15, 1965, AND IDENTIFIED THE NAME OF THE RESPONDENT THEREON.

THE RESPONDENT ORALLY DENIED RECEIPT OF NOTICE.

SECTION 85(1) OF THE LABOUR RELATIONS ACT IS AS FOLLOWS:-

FOR THE PURPOSES OF THIS ACT AND OF ANY PROCEEDINGS TAKEN UNDER IT, ANY NOTICE OR COMMUNICATION SENT THROUGH HER MAJESTY'S MAILS SHALL BE PRESUMED, UNLESS THE CONTRARY IS PROVED, TO HAVE BEEN RECEIVED BY THE ADDRESSEE IN THE ORDINARY COURSE OF MAIL.

(EMPHASIS ADDED).

IN VIEW OF THE SPECIFIC LANGUAGE OF THE ACT AND WITHOUT SEEKING TO GIVE A LIBERAL INTERPRETATION TO THE STATUTE, I CANNOT FIND THE RESPONDENT'S VIVE VOCE DENIAL CONSTITUTES PROOF OF ITS CLAIM.

IN THESE CIRCUMSTANCES I FIND A REGISTERED LETTER MUST BE PRESUMED TO HAVE BEEN RECEIVED BY THE RESPONDENT AND THAT NOTICE WAS GIVEN WITHIN THE SPECIFIED PERIOD.

11254-65-M: INTERNATIONAL UNION OF OPERATING ENGINEERS, CONTRACTING BY ITS LOCAL 796 (TRADE UNION) V. KING-YONGE-YARMON LEASEHOLD PARTNERSHIP (EMPLOYER).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDERMOTT.

APPEARANCES AT THE BEARING: J. PARKER AND W. WALKER FOR THE TRADE UNION, AND NO ONE APPEARING FOR THE EMPLOYER.

DECISION OF THE BOARD: (JANUARY 25, 1966.)

THIS IS A REFERENCE TO THE BOARD BY THE MINISTER OF LABOUR, PURSUANT TO SECTION 79A OF THE ACT, OF THE QUESTION WHETHER THE TRADE UNION HAS GIVEN THE EMPLOYER TIMELY NOTICE OF DESIRE TO BARGAIN FOR A NEW COLLECTIVE AGREEMENT PURSUANT TO SECTION 40 OF THE ACT.

THE COLLECTIVE AGREEMENT MADE BETWEEN THE PARTIES CONTAINS THE PROVISION THAT IT SHALL CONTINUE IN FORCE AND EFFECT UNTIL THE 14TH DAY OF NOVEMBER, 1965, AND THAT " - - IT SHALL CONTINUE FROM YEAR TO YEAR UNLESS EITHER PARTY THERETO GIVES THE OTHER AT LEAST 60 DAYS WRITTEN NOTICE OF TERMINATION AS OF THE FOLLOWING 14TH DAY OF NOVEMBER NEXT ENSUING". THE AGREEMENT WAS EFFECTIVE AS OF THE 14TH DAY OF NOVEMBER, 1964. BY THE PROVISION THAT THE AGREEMENT SHALL CONTINUE IN FORCE AND EFFECT UNTIL THE 14TH DAY OF NOVEMBER, 1965, IT IS MADE CLEAR THAT THE AGREEMENT WAS TO BE AN AGREEMENT FOR A TERM OF ONE YEAR SUBJECT TO CONTINUATION IF NO NOTICE OF TERMINATION WERE GIVEN. SOME DIFFICULTY ARISES, IN THAT ON A LITERAL READING OF THE WORDS QUOTED, THERE IS NO PROVISION FOR THE GIVING OF SUCH NOTICE IN THE FIRST YEAR OF THE AGREEMENT. THE REQUIREMENT BEING THAT NOTICE BE GIVEN "AS OF THE FOLLOWING 14TH DAY OF NOVEMBER NEXT ENSUING". THE QUESTION OF THE DURATION AND TERMINATION OF THE COLLECTIVE AGREEMENT IS NOT WITHOUT AMBIGUITY AND IT MAY BE THAT THE AGREEMENT SHOULD BE READ AS PROVIDING FOR THE GIVING OF NOTICE AT LEAST 60 DAYS BEFORE THE 14TH OF NOVEMBER IN ANY YEAR.

ON SEPTEMBER 14TH, 1965, THE TRADE UNION SENT TO THE EMPLOYER BY REGISTERED MAIL A NOTICE OF DESIRE TO BARGAIN WITH A VIEW TO RENEWAL OF THE COLLECTIVE AGREEMENT. THIS LETTER, IF DELIVERED ON SEPTEMBER 15TH, WOULD HAVE GIVEN THE EMPLOYER ONLY 59 DAYS NOTICE OF THE TRADE UNION'S DESIRE TO BARGAIN. THE EMPLOYER, HOWEVER, REPLIED TO THIS NOTICE BY LETTER, DATED SEPTEMBER 20TH, RAISING NO OBJECTION TO ITS TIMELINESS AND REQUESTING A POSTPONEMENT OF NEGOTIATIONS ON GROUNDS OF CONVENIENCE. ULTIMATELY TWO MEETINGS WERE HELD BETWEEN THE PARTIES, AT WHICH COLLECTIVE BARGAINING NEGOTIATIONS TOOK PLACE. THE EVIDENCE BEFORE THE BOARD IS THAT NO OBJECTION WAS TAKEN BY THE EMPLOYER AS TO THE EFFECTIVENESS OF THE NOTICE GIVEN OR THE PROPRIETY OF NEGOTIATIONS AT THAT TIME. AFTER THE SECOND MEETING, HOWEVER, THE EMPLOYER TOOK OBJECTION TO THE TIMELINESS OF THE NOTICE AND HAS OBJECTED ON THAT GROUND TO THE GRANTING OF CONCILIATION SERVICES. IT MAY BE NOTED THAT THE EMPLOYER, ALTHOUGH SERVED WITH NOTICE OF THESE PROCEEDINGS, DID NOT SEE FIT TO APPEAR AT THE HEARING OF THIS MATTER.

HAVING REGARD TO THE FOREGOING, IT IS CLEAR THAT, EVEN IF IT IS ASSUMED THAT TIMELY NOTICE WAS NOT GIVEN, THE PARTIES HAVE MET AND BARGAINED, AND THE MINISTER MAY, PURSUANT TO SECTION 13(2) OF THE ACT, APPOINT A CONCILIATION OFFICER.

IN RESPONSE TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER, THE BOARD DECLARES THAT THE TRADE UNION AND THE EMPLOYER HAVE MET AND BARGAINED WITHOUT OBJECTION TAKEN, AND THAT THE PROVISIONS OF SECTION 13(2) OF THE ACT ARE APPLICABLE IN THESE CIRCUMSTANCES.

INDEXED ENDORSEMENTS - REQUEST FOR CONSIDERATION

10906-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. ESSEX WIRE CORPORATION LIMITED (RESPONDENT) v. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL UNION 141 (INTERVENER).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDERMOTT.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., D. STOREY AND P. DALEY FOR THE APPLICANT, J. V. CUFF FOR THE RESPONDENT, J. NELLIGAN AND W. W. TILLER FOR THE INTERVENER.

DECISION OF J. H. BROWN, DEPUTY VICE-CHAIRMAN AND BOARD MEMBER D. McDERMOTT: (JANUARY 20, 1966.)

1. THE BOARD AT A HEARING ON JANUARY 13TH, 1966 ENTERTAINED THE REPRESENTATIONS OF THE PARTIES ON THE REQUEST OF THE INTERVENER THAT THE BOARD RECONSIDER ITS DECISION IN THIS MATTER DATED DECEMBER 29TH, 1965.
2. COUNSEL FOR THE INTERVENER IN SUPPORT OF HIS REQUEST FOR RECONSIDERATION MADE THE FOLLOWING SUBMISSION. THE APPLICATION FOR CERTIFICATION OF THE APPLICANT AND THE COLLATERAL QUESTION AS TO WHETHER THE COLLECTIVE AGREEMENT ENTERED INTO BY THE RESPONDENT AND THE INTERVENER IS A BAR TO THE APPLICATION ARE SEPARATE ISSUES. BEFORE THE BOARD CAN PROCEED WITH THE CERTIFICATION APPLICATION IT IS NECESSARY FOR IT TO MAKE A DETERMINATION ON THE COLLATERAL ISSUE, NAMELY, THE VALIDITY OF THE COLLECTIVE AGREEMENT. ONLY IF THE BOARD FINDS THAT THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER IS INVALID AND, THEREFORE, NOT A BAR, CAN THE BOARD CONSIDER THE MERITS OF THE APPLICATION FOR CERTIFICATION. SINCE THE BOARD DID NOT MAKE ANY DECISION WITH RESPECT TO THE COLLECTIVE AGREEMENT IT COULD NOT CONSIDER THE BUILD-UP IN THE EMPLOYMENT FORCE OF THE RESPONDENT OR DIRECT THE TAKING OF A REPRESENTATION VOTE IN ORDER TO DETERMINE THE RIGHTS OF THE APPLICANT IN ITS CERTIFICATION APPLICATION.
3. WITH REFERENCE TO THE COLLATERAL ISSUE, COUNSEL FOR THE INTERVENER MADE THE FOLLOWING SUBMISSION. BY VIRTUE OF THE WORDING OF SECTION 45A(1) THE BOARD CAN ONLY CONSIDER THE ENTITLEMENT OF THE INTERVENER TO REPRESENT THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT COVERED BY THE AGREEMENT AS OF THE DATE THE COLLECTIVE AGREEMENT WAS ENTERED INTO BY THE PARTIES. THE FACT OF A BUILD-UP IN THE WORK FORCE OF THE RESPONDENT SUBSEQUENT TO THAT DATE CAN HAVE NO BEARING ON THE INTERVENER'S ENTITLEMENT TO REPRESENT THE BARGAINING UNIT EMPLOYEES OF THE RESPONDENT. SINCE ON SEPTEMBER 24TH, 1965, THE DATE ON WHICH THE AGREEMENT CAME INTO EFFECT, ELEVEN OF THE FIFTEEN EMPLOYEES OF THE RESPONDENT WERE MEMBERS OF THE INTERVENER, TH

INTERVENER HAS ESTABLISHED ITS RIGHT TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT. THE BOARD, THEREFORE, EXCEEDED ITS JURISDICTION UNDER SECTION 45A IN DIRECTING THE TAKING OF A REPRESENTATION VOTE. IN ANY EVENT, THE RESULT OF THE VOTE CANNOT ASSIST THE BOARD IN DETERMINING THE RIGHT OF THE INTERVENER TO REPRESENT THE EMPLOYEES OF THE RESPONDENT AS THE ONLY RELEVANT DATE IS THE DATE ON WHICH THE COLLECTIVE AGREEMENT WAS ENTERED INTO BY THE PARTIES.

4. WE WOULD FIRST OF ALL DEAL WITH THE LAST ARGUMENT MADE BY COUNSEL FOR THE INTERVENER. HE ASSERTS THAT THE RESULT OF THE REPRESENTATION VOTE TAKEN AFTER THE COLLECTIVE AGREEMENT WAS ENTERED INTO BY THE RESPONDENT AND THE INTERVENER CANNOT ASSIST THE BOARD IN DETERMINING THE RIGHT OF THE INTERVENER TO REPRESENT THE EMPLOYEES OF THE RESPONDENT. YET WE NOTE THAT SECTION 45A(2) SPECIFICALLY PROVIDES THAT THE BOARD MAY HOLD SUCH REPRESENTATION VOTES AS IT DEEMS APPROPRIATE BEFORE DISPOSING OF THE ISSUE OF THE INTERVENER'S ENTITLEMENT TO REPRESENT THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. OBVIOUSLY, SUCH VOTES COULD ONLY BE TAKEN AFTER ANY COLLECTIVE AGREEMENT WHICH IS CHALLENGED UNDER SECTION 45A(1) HAD COME INTO EFFECT. IF THE BOARD WERE TO ACCEPT THE ARGUMENT OF COUNSEL FOR THE INTERVENER THE PROVISION IN SECTION 45A(2) PERMITTING THE BOARD TO CONDUCT REPRESENTATION VOTES COULD HAVE NO POSSIBLE APPLICATION.

5. WHILE THE BOARD AGREES WITH COUNSEL FOR THE RESPONDENT THAT THE APPLICATION FOR CERTIFICATION OF THE APPLICANT AND THE COLLATERAL QUESTION AS TO WHETHER THE COLLECTIVE AGREEMENT IS A BAR TO THE APPLICATION ARE SEPARATE ISSUES, THE BOARD CANNOT ACCEPT THE ARGUMENT OF THE INTERVENER THAT THE COLLATERAL ISSUE MUST BE DETERMINED BEFORE THE BOARD CAN EVEN CONSIDER THE MERITS OF THE CERTIFICATION APPLICATION. SECTION 45A(1) READS AS FOLLOWS:

WHERE AN EMPLOYER AND A TRADE UNION THAT HAS NOT BEEN CERTIFIED AS THE BARGAINING AGENT FOR A BARGAINING UNIT OF EMPLOYEES OF THE EMPLOYER ENTER INTO A COLLECTIVE AGREEMENT, THE BOARD MAY, UPON THE APPLICATION OF ANY EMPLOYEE IN THE BARGAINING UNIT OR OF A TRADE UNION REPRESENTING ANY EMPLOYEE IN THE BARGAINING UNIT, DURING THE FIRST YEAR OF THE PERIOD OF TIME THAT THE FIRST COLLECTIVE AGREEMENT BETWEEN THEM IS IN OPERATION, DECLARE THAT THE TRADE UNION WAS NOT, AT THE TIME THE AGREEMENT WAS ENTERED INTO, ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT.

IN OUR VIEW, THE OPERATIVE WORDS OF THE SUBSECTION ARE - "THE BOARD MAY . . . DECLARE THAT THE TRADE UNION WAS NOT . . . ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT". ACCORDINGLY, WHEN THERE IS EVIDENCE OF A PLANNED BUILD-UP IN THE WORK FORCE OF THE RESPONDENT THE BOARD, PURSUANT TO SECTION 45A(1), CAN TAKE COGNIZANCE OF THE BUILD-UP IN DETERMINING THE ENTITLEMENT OF THE INTERVENER TO REPRESENT THE BARGAINING UNIT EMPLOYEES OF THE RESPONDENT. IN OTHER WORDS, THE BOARD CAN CONSIDER THE BUILD-UP IN THE WORK FORCE OF THE RESPONDENT AND CAN EMPLOY THE SUBSEQUENTLY ACQUIRED EVIDENCE RELATING TO THE BUILD-UP IN DECIDING WHETHER AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO BY THE RESPONDENT AND THE INTERVENER THE INTERVENER WAS ENTITLED TO REPRESENT THE EMPLOYEES OF THE RESPONDENT. WE DO NOT ACCEPT COUNSEL FOR THE INTERVENER'S ARGUMENT THAT THE WORDS OF THE SUBSECTION - "AT THE TIME THE AGREEMENT WAS ENTERED INTO" - MUST BE INTERPRETED TO MEAN THAT THE BOARD CANNOT CONSIDER ANY EVENTS THAT OCCUR AFTER THE COLLECTIVE AGREEMENT WAS

ENTERED INTO IN DETERMINING THE ENTITLEMENT OF THE INTERVENER TO REPRESENT THE EMPLOYEES OF THE RESPONDENT. IN OUR OPINION, SUCH AN INTERPRETATION IS WHOLLY INCONSISTENT WITH THE INTENTION AND CONTEXT OF THE ENTIRE SECTION.

6. IT IS CLEAR THAT THE VERY PURPOSE FOR WHICH SECTION 45A WAS ENACTED IS TO ENSURE THAT THE EMPLOYEES OF AN EMPLOYER ARE REPRESENTED BY A BARGAINING AGENT OF THEIR CHOICE. IN THE INSTANT CASE, WHILE THE INTERVENER HAD IN MEMBERSHIP A MAJORITY OF THE EMPLOYEES EMPLOYED BY THE RESPONDENT ON SEPTEMBER 24TH, 1965 THERE WERE ONLY FIFTEEN EMPLOYEES EMPLOYED BY THE RESPONDENT ON THAT DATE. AT THE HEARING OF THE BOARD ON JANUARY 13TH, HOWEVER, THE REPRESENTATIVE OF THE RESPONDENT INFORMED THE BOARD THAT THERE WERE APPROXIMATELY 183 EMPLOYEES IN THE EMPLOY OF THE RESPONDENT AS OF THE END OF THE FIRST WEEK OF JANUARY, 1966. WE FIND IT DIFFICULT TO BELIEVE THAT IT WAS INTENDED BY THE LEGISLATURE THAT THE EVIDENCE OF MEMBERSHIP SHOWN BY THE INTERVENER FOR ELEVEN EMPLOYEES ENTITLES IT TO AN AUTOMATIC RIGHT TO REPRESENT NO LESS AND PROBABLY MORE THAN 183 EMPLOYEES.

7. IN A CERTIFICATION APPLICATION WHERE THERE IS EVIDENCE OF A PLANNED BUILD-UP IN THE WORK FORCE OF THE RESPONDENT EMPLOYER, EVEN THOUGH THE APPLICANT TRADE UNION MAY HAVE EVIDENCE OF MEMBERSHIP FOR MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT AS OF THE DATE OF THE MAKING OF THE APPLICATION, THE BOARD DOES NOT GRANT OUTRIGHT CERTIFICATION. RATHER, THE BOARD IN PAST DECISIONS HAS HELD THAT DESPITE THE EVIDENCE OF MEMBERSHIP FOR OVER FIFTY-FIVE PER CENT OF THE BARGAINING UNIT EMPLOYEES AS OF THE DATE OF THE APPLICATION, THE APPLICANT IS ONLY ENTITLED TO A REPRESENTATION VOTE TO BE TAKEN WHEN A REPRESENTATIVE WORK FORCE IS IN THE EMPLOY OF THE RESPONDENT. THE BOARD SEES NO REASON TO TREAT A COLLECTIVE AGREEMENT ENTERED INTO IN THE FACE OF A BUILD-UP IN THE WORK FORCE OF THE RESPONDENT IN ANY DIFFERENT MANNER. ACCORDINGLY, A TRADE UNION THAT IS PARTY TO A COLLECTIVE AGREEMENT EXECUTED IN THE ABOVE CIRCUMSTANCES, ALTHOUGH IT HAS MEMBERSHIP FOR A MAJORITY OF THE EMPLOYEES OF THE EMPLOYER ON THE EFFECTIVE DATE OF THE AGREEMENT, IS ENTITLED TO NO MORE THAN A REPRESENTATION VOTE TO BE TAKEN WHEN THE EMPLOYER HAS HIRED A REPRESENTATIVE WORK FORCE. STATED IN ANOTHER WAY, WHERE THERE IS A BUILD-UP SITUATION, THE DATE OF THE MAKING OF AN APPLICATION FOR CERTIFICATION OR THE DATE OF THE SIGNING OF A COLLECTIVE AGREEMENT FOLLOWING VOLUNTARY RECOGNITION BY AN EMPLOYER IS NOT THE ONLY RELEVANT DATE IN DETERMINING WHETHER A TRADE UNION IS ENTITLED TO REPRESENT BARGAINING UNIT EMPLOYEES OF THE EMPLOYER. JUST AS RELEVANT IS THE DATE ON WHICH THE BOARD DIRECTS THE TAKING OF A REPRESENTATION VOTE.

8. IN THE INSTANT CASE, FOR THE ABOVE REASONS, THE BOARD FOUND THAT BOTH THE APPLICANT AND THE INTERVENER WERE ENTITLED TO HAVE THEIR NAMES PLACED ON THE SAME BALLOT FOR A REPRESENTATION VOTE TO BE HELD AT A TIME IN THE FUTURE TO BE DETERMINED BY THE BOARD.

9. THE BOARD ACCORDINGLY REAFFIRMS ITS DECISION DATED DECEMBER 29TH, 1965. DECISION OF BOARD MEMBER H. F. IRWIN: (JANUARY 20, 1966.)

I DISSENT.

IN ITS DECISION DATED DECEMBER 29TH, 1965, THE BOARD HELD THAT THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WAS ENTERED INTO PREMATURELY BECAUSE OF THE EVIDENCE PERTAINING TO THE ANTICIPATED

BUILD-UP IN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT SUBSEQUENT TO THE TIME THE AGREEMENT WAS ENTERED INTO.

IN ADJUDICATING THE REQUEST OF THE INTERVENER THAT THE BOARD RECONSIDER ITS DECISION IN THIS MATTER, THE REAL ISSUE IS THE INTERPRETATION OF THE WORDS "ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO" AS SET OUT IN SECTION 45A SUBSECTION (3): -

- (3) ON AN APPLICATION UNDER SUBSECTION 1, THE ONUS OF ESTABLISHING THAT THE TRADE UNION WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO RESTS ON THE PARTIES TO THE AGREEMENT.

(EMPHASIS ADDED)

THE WORDING OF SUBSECTION (3) IS CLEAR AND UNAMBIGUOUS. ACCORDINGLY, THE WORDS USED THEREIN MUST BE GIVEN THEIR NORMAL MEANING. THE BOARD USES SIMILAR WORDING IN ITS OFFICIAL ENDORSEMENTS IN RESPECT OF APPLICATIONS FOR CERTIFICATION. A TYPICAL ENDORSEMENT READS AS FOLLOWS:-

"THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE."

(EMPHASIS ADDED)

THE BOARD HAS STATED OVER AND OVER AGAIN THAT THE WORDS "AT THE TIME THE APPLICATION WAS MADE" ARE TO BE INTERPRETED AS REFERRING ONLY TO THOSE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE THE APPLICATION FOR CERTIFICATION WAS MADE (THAT IS, THE DATE ON WHICH IT IS FILED WITH THE BOARD) AND NO OTHERS. EMPLOYEES WHO ARE SUBSEQUENTLY HIRED BY THE RESPONDENT AND PLACED IN THE BARGAINING UNIT ARE NOT INCLUDED WITHIN THE SCOPE OF THE ABOVE QUOTED WORDS. TO BE CONSISTENT, THE BOARD MUST APPLY THE SAME INTERPRETATION TO THE RELEVANT WORDS IN SUBSECTION (3), THAT IS, THEY MEAN PRECISELY THOSE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO AND NO OTHERS.

ON AN APPLICATION FOR CERTIFICATION, THE BOARD ITSELF DOES NOT INITIATE AN ENQUIRY INTO ANY ANTICIPATED INCREASE IN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT THAT MAY SUBSEQUENTLY TAKE PLACE. IT ONLY CONSIDERS THIS ISSUE WHEN RAISED BY ONE OF THE PARTIES TO THE PROCEEDING. AT THE TIME THE AGREEMENT WAS ENTERED INTO IN THE INSTANT CASE, NEITHER THE RESPONDENT, THE INTERVENER, THE EMPLOYEES OR THE APPLICANT UNION RAISED THIS ISSUE.

THE RESPONDENT AND THE INTERVENER UNION HAVE PROVED CONCLUSIVELY THAT 11 OUT OF THE 15 EMPLOYEES, OR MORE THAN 73% OF THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO, WERE MEMBERS OF THE SAID UNION. MOREOVER, A MAJORITY OF THESE EMPLOYEES RATIFIED THE AGREEMENT AT A MEETING DULY CALLED BY THE UNION FOR THAT PURPOSE ON THE DATE THE AGREEMENT WAS SIGNED.

IT IS ABUNDANTLY CLEAR, THEREFORE, THAT THE INTERVENER UNION WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO. THEREFORE, THE PARTIES TO THE AGREEMENT HAVE FULLY DISCHARGED THE ONUS UPON THEM AS PRESCRIBED BY THE PROVISIONS OF SUBSECTION (3) OF SECTION 45A OF THE ACT. THE SAID PARTIES HAVING MET THE REQUIREMENTS OF THE PRESCRIBED ONUS, IN THE CIRCUMSTANCES OF THIS CASE, THE BOARD MUST FIND THAT (1) THE INTERVENER UNION WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO AND (2) THAT THE SAID AGREEMENT IS A VALID ONE. IT FOLLOWS, THEN, THAT THE APPLICATION OF THE APPLICANT UNION FOR CERTIFICATION IS UNTIMELY UNDER THE PROVISIONS OF SECTION 5 OF THE ACT AND MUST BE DISMISSED.

FOR THE ABOVE REASONS, I WOULD HAVE REVOKED THE BOARD'S DECISION DATED DECEMBER 29TH, 1965, ORDERING A REPRESENTATION VOTE AND DISMISS THE APPLICATION FOR CERTIFICATION FILED BY THE APPLICANT UNION.

11098-65-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) V. IROQUOIS FALLS AND CALVERT DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: (JANUARY 27, 1966.)

1. THE APPLICANT WAS CERTIFIED BY THE BOARD ON DECEMBER 23RD, 1965.
2. ON JANUARY 18TH, 1966, THE BOARD RECEIVED A DOCUMENT, DATED JANUARY 15TH, 1966, PURPORTING TO BE SIGNED BY FOUR EMPLOYEES OF THE RESPONDENT AND CONTAINING INTER ALIA THE FOLLOWING WORDING, "WE FEEL POSSIBLY THAT WE CAN ACCOMPLISH AS MUCH BY CONTINUING TO BARGAIN ON OUR OWN BEHALF AND THEREFOR REQUEST OUR CERTIFICATION BY THE DEPARTMENT OF LABOUR TO HAVE THE MINE WORKERS UNION WHO HAVE MADE APPLICATION TO ACT AS OUR BARGAINING AGENT BE WITHDRAWN."
3. THE LETTER MAKES NO REFERENCE TO ANY SECTION OF THE ACT UNDER WHICH THE RELIEF SOUGHT MIGHT BE AVAILABLE. IF, HOWEVER, THE REQUEST IS TREATED AS AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS, IT SHOULD BE EXAMINED IN THE LIGHT OF THE PROVISIONS OF SECTIONS 43(1), 45(1) AND (2). THESE SECTIONS READ AS FOLLOWS:
 - 43.--(1) IF A TRADE UNION DOES NOT MAKE A COLLECTIVE AGREEMENT WITH THE EMPLOYER WITHIN ONE YEAR AFTER ITS CERTIFICATION, ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE MAY APPLY TO THE BOARD FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.
 - 45.--(1) IF A TRADE UNION FAILS TO GIVE THE EMPLOYER NOTICE UNDER SECTION 11 WITHIN SIXTY DAYS FOLLOWING CERTIFICATION OR IF IT FAILS TO GIVE NOTICE UNDER SECTION 40 AND NO SUCH NOTICE IS GIVEN BY THE EMPLOYER, THE BOARD MAY, UPON THE APPLICATION OF THE EMPLOYER OR OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT, AND WITH OR WITHOUT A REPRESENTATION VOTE, DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.

(2) WHERE A TRADE UNION THAT HAS GIVEN NOTICE UNDER SECTION 11 OR SECTION 40 OR THAT HAS RECEIVED NOTICE UNDER SECTION 40 FAILS TO COMMENCE TO BARGAIN WITHIN SIXTY DAYS FROM THE GIVING OF THE NOTICE OR, AFTER HAVING COMMENCED TO BARGAIN BUT BEFORE THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR MEDIATOR, ALLOWS A PERIOD OF SIXTY DAYS TO ELAPSE DURING WHICH IT HAS NOT SOUGHT TO BARGAIN, THE BOARD MAY, UPON THE APPLICATION OF THE EMPLOYER OR OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT AND WITH OR WITHOUT A REPRESENTATION VOTE, DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.

4. IN VIEW OF THE FACT THAT CERTIFICATION WAS GRANTED AS LATE AS DECEMBER 23RD, 1965 IT HARDLY SEEMS NECESSARY TO OBSERVE THAT THE PROVISIONS OF SECTION 43(1) HAVE NO APPLICATION IN THESE CIRCUMSTANCES.

5. IT IS EQUALLY OBVIOUS THAT NO RELIEF IS AVAILABLE TO EMPLOYEES UNDER THE TERMS OF SECTION 45(1) OR 45(2) SINCE THE SIXTY DAYS' PERIOD REFERRED TO IN EACH SUBSECTION HAS NOT YET ELAPSED.

6. ON THE OTHER HAND, IF THE LETTER BE TREATED AS A REQUEST UNDER SECTION 79(1) THAT THE BOARD RECONSIDER ITS DECISION OF DECEMBER 23, 1965, IT MUST BE DENIED FOR THE REASONS GIVEN IN THE CASE OF PERMANENT TRANSIT-MIX CONCRETE LIMITED, D.L.S. 76-644.

7. IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS OF THE OPINION THAT THE EMPLOYEE APPLICANTS HAVE FAILED TO MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE REQUEST IS ACCORDINGLY DENIED.

11121-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. PERCHUK LUMBER (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (JANUARY 6, 1966.)

1. ON NOVEMBER 23, 1965, THE APPLICANT APPLIED TO THE BOARD FOR CERTIFICATION UNDER THE CONSTRUCTION INDUSTRY SECTIONS OF THE LABOUR RELATIONS ACT FOR ALL EMPLOYEES OF THE RESPONDENT WORKING IN A DEFINED AREA IN NORTHWESTERN ONTARIO. AS A RESULT OF STATEMENTS MADE IN THE APPLICATION AND REPLY, IT APPEARED TO THE BOARD THAT QUESTIONS WOULD ARISE CONCERNING THE APPLICATION OF THE CONSTRUCTION INDUSTRY PROVISIONS TO THE CASE AND, FURTHER, AS TO THE EMPLOYMENT STATUS OF CERTAIN PERSONS AFFECTED BY THE APPLICATION. ACCORDINGLY, AN EXAMINER WAS APPOINTED TO INQUIRE INTO THE MATTERS AND TO REPORT TO THE BOARD THEREON.

2. BEFORE THE EXAMINER COULD ARRANGE HIS MEETINGS, THE BOARD RECEIVED A LETTER FROM THE APPLICANT ENCLOSING "AGREEMENTS SIGNED BETWEEN PERCHUK LUMBER AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 AND LUMBER AND SAWMILL WORKERS LOCAL UNION 2693, PORT ARTHUR, ONTARIO". THESE AGREEMENTS WERE ENTERED INTO ON DECEMBER 8, 1965, THE DAY THE

BOARD ENDORSED THE RECORD, APPOINTING AN EXAMINER. THE LETTER FROM THE APPLICANT REQUESTED "LEAVE OF THE BOARD TO WITHDRAW OUR APPLICATION FOR CERTIFICATION ON PERCHUK LUMBER FOR REASONS THAT THE UNIT APPLIED FOR IS ALREADY COVERED BY THE ENCLOSED AGREEMENTS".

3. ON DECEMBER 13, 1965, IN ACCORDANCE WITH ITS USUAL PRACTICE IN SUCH CASES, THE BOARD FURTHER ENDORSED THE RECORD IN THIS MATTER AS FOLLOWS:

COLLECTIVE AGREEMENTS DATED DECEMBER 8TH, 1965, BETWEEN THE RESPONDENT AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 AND BETWEEN THE RESPONDENT AND LUMBER & SAWMILL WORKERS UNION LOCAL 2693, THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA HAVE BEEN FILED WITH THE BOARD.

IN THESE CIRCUMSTANCES THERE IS NO NEED TO PROCESS THE APPLICATION FURTHER AND THE PROCEEDINGS ARE ACCORDINGLY TERMINATED.

4. BY LETTER DATED DECEMBER 16, 1965, THE RESPONDENT'S SOLICITORS INFORMED THE BOARD THAT FOR PURPOSES OF THE RECORD THE RESPONDENT WAS TAKING THE POSITION THAT THERE WERE "NO VALID COLLECTIVE AGREEMENTS IN FORCE THAT ARE BINDING UPON THE RESPONDENT". IN A LETTER DATED DECEMBER 28, 1965, THE SOLICITORS FOR THE APPLICANT STATED:

THE LETTER FROM THE SOLICITORS REPRESENTING PERCHUK LUMBER WOULD INDICATE THAT THEY DESIRE TO HAVE AN ADJUDICATION ON THE VALIDITY OF THE SHORT FORM AGREEMENT EXECUTED ON DECEMBER 8TH, 1965. PLEASE BE ADVISED THAT WE HAVE NO OBJECTION TO HAVING THE BOARD EXERCISE ITS DISCRETION UNDER SECTION 79 TO RE-OPEN THE MATTER AND CONDUCT A FULL INQUIRY AS TO THE VALIDITY OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES.

BY LETTER DATED DECEMBER 31, 1965, THE RESPONDENT'S SOLICITORS INFORMED THE BOARD THAT

THE RESPONDENT HAS NO OBJECTION TO HAVING THE BOARD INQUIRE INTO THE VALIDITY OF THE ALLEGED COLLECTIVE AGREEMENTS BETWEEN THE ABOVE MENTIONED PARTIES AS A MATTER COLLATERAL TO THE INITIAL APPLICATION FOR CERTIFICATION.

5. A CAREFUL CONSIDERATION OF THE MATERIALS BEFORE US FAILS TO DISCLOSE IN ANY SATISFACTORY MANNER WHICH PARTY IS SEEKING RELIEF, THAT IS, WHICH PARTY WOULD HAVE THE CARRIAGE OF A RE-OPENING OF THE CASE. EACH PARTY SEEMS TO BE TAKING THE POSITION THAT THE OTHER IS SEEKING THE RELIEF. FURTHERMORE, IT APPEARS THAT EACH PARTY HAS SIGNED DOCUMENTS WHICH ON THEIR FACE CONSTITUTE COLLECTIVE AGREEMENTS. IF A PARTY SIGNING THESE "AGREEMENTS" IS ENTITLED TO QUESTION THEIR VALIDITY (AND AGAIN WE MAKE NO DETERMINATION ON THIS POINT) THE PROPER TIME TO DO SO, IN OUR VIEW, IS WHEN THE OTHER PARTY SEEKS TO ENFORCE THEM. IN SUCH CIRCUMSTANCES THE PROCEDURE AVAILABLE TO THE PARTY SEEKING ENFORCEMENT MAY DEPEND ON THE NATURE OF THE DISPUTE AND ON THE CONTENT OF THE "AGREEMENTS" IN QUESTION. IN OTHER WORDS, THE AGREEMENTS

MAY PROVIDE FOR A METHOD OF DETERMINING THE DISPUTE OR, ALTERNATIVELY, THERE MAY BE OTHER REMEDIES AVAILBALE UNDER THE LABOUR RELATIONS ACT. AGAIN, THE BOARD IS NOT CLEAR JUST WHAT THE ISSUE IS BETWEEN THE PARTIES. THE APPLICANT APPEARS TO THINK IT HAS SOMETHING TO DO WITH THE FORM OF THE AGREEMENT, WHILE THE RESPONDENT SPEAKS IN TERMS OF VAGUE GENERALITIES.

ANOTHER QUESTION THAT ARISES IS WHAT WOULD FOLLOW FROM A BOARD DETERMINATION? THE PROCEEDINGS HAVE BEEN TERMINATED FOLLOWING A REQUEST FOR LEAVE TO WITHDRAW THE CERTIFICATION APPLICATION. IN THESE CIRCUMSTANCES, EVEN IF WE WERE TO FIND THAT THE DOCUMENTS ARE NOT "COLLECTIVE AGREEMENTS" WE NOT PERSUADED THAT WE OUGHT TO RENINSTATE THE CERTIFICATION PROCEEDINGS.

6. HAVING REGARD TO THE ABOVE CONSIDERATIONS AND ASSUMING THAT THIS IS A MATTER WHICH FALLS WITHIN SECTION 79(1) OF THE ACT (AND WE EXPRESS NO OPINION ON THIS ONE WAY OR THE OTHER) THE BOARD DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER ITS DECISION OF DECEMBER 13, 1965.

STATISTICAL TABLES FOR JANUARY 1966

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	JANUARY 1ST 10 MTHS OF FISCAL YEAR 1966	1965-66	1964-65
I. CERTIFICATION	72	817	779
II. DECLARATION TERMINATING BARGAINING RIGHTS	3	50	74
III. DECLARATION OF SUCCESSOR STATUS	7	24	4
IV. DECLARATION THAT STRIKE UNLAWFUL	4	46	35
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	4	5
VI. CONSENT TO PROSECUTE	4	83	64
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	7	90	133
VIII. MISCELLANEOUS	6	45	23
TOTAL	<u>103</u>	<u>1159</u>	<u>1117</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	JANUARY 1ST 10 MTHS OF FISCAL YEAR 1966	1965-66	1964-65
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	80	980	955

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	JANUARY 1ST 1966	10 MTHS OF FISCAL YR. 1965-66	1964-65
I. CERTIFICATION	65	826	767
II. DECLARATION TERMINATING BARGAINING RIGHTS	1	53	77
III. DECLARATION OF SUCCESSOR STATUS	9	19	6
IV. DECLARATION THAT STRIKE UNLAWFUL	3	43	35
V. DECLARATION THAT LOCK-OUT UNLAWFUL	-	4	5
VI. CONSENT TO PROSECUTE	1	75	64
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	6	5	151
VIII. MISCELLANEOUS	3	95	25
TOTAL	88	1120	1819

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>JANUARY 1ST 10 MTHS FISCAL YR.</u>			<u>JANUARY 1ST 10 MTHS FISCAL YR.</u>		
	<u>1966</u>	<u>1965-66</u>	<u>1964-65</u>	<u>1966</u>	<u>1965-66</u>	<u>1964-65</u>
<u>• CERTIFICATION</u>						
GRANTED	44	611	565	1852	16690	16692
DISMISSED	17	144	133	17807	26251	6226
WITHDRAWN	4	71	69	51	3412	2422
TOTAL	<u>65</u>	<u>826</u>	<u>767</u>	<u>19710</u>	<u>46353</u>	<u>25340</u>
<u>• TERMINATION</u>						
<u>OF BARGAINING</u>						
<u>RIGHTS</u>						
GRANTED	1	25	47	141	1435	590
DISMISSED	-	25	28	-	765	1140
WITHDRAWN	-	3	2	-	119	82
TOTAL	<u>1</u>	<u>53</u>	<u>77</u>	<u>141</u>	<u>2319</u>	<u>1812</u>

THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE
AND DISPOSITION (CONTINUED)

NUMBER OF APPLICATIONS		
JANUARY 1ST 10 MTHS FISCAL YR.		
1966	1965-66	1964-65

III. DECLARATION THAT STRIKE
UNLAWFUL

GRANTED	-	7	13
DISMISSED	-	4	5
WITHDRAWN	3	32	17
	-	-	-
TOTAL	3	43	35
	=	=	=

IV. DECLARATION THAT LOCKOUT
UNLAWFUL

GRANTED	-	-	1
DISMISSED	-	4	1
WITHDRAWN	-	-	3
	-	-	-
TOTAL	-	4	5
	=	=	=

V. CONSENT TO PROSECUTE

GRANTED	-	29	13
DISMISSED	-	14	14
WITHDRAWN	1	32	37
	-	-	-
TOTAL	1	75	64
	=	=	=

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED
OF BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
<u>JANUARY 1ST 10 MTHS FISCAL YR.</u>	<u>1966</u>	<u>1965-66</u>	<u>1964-65</u>
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	2	23	17
POST-HEARING VOTE	3	28	29
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	6	8
POST-HEARING VOTE	6	32	48
BALLOTS NOT COUNTED	1	3	-
TOTAL	<u>12</u>	<u>92</u>	<u>102</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE
ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	JANUARY 1ST 10 MTHS FISCAL YR.		
	1966	1965-66	1964-65
*RESPONDENT UNION SUCCESSFUL	-	1	-
RESPONDENT UNION UNSUCCESSFUL	1	20	12
	<hr/>	<hr/>	<hr/>
TOTAL	1	21	12
	<hr/>	<hr/>	<hr/>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING FEBRUARY 1966

BARGAINING AGENTS CERTIFIED DURING FEBRUARY

NO VOTE CONDUCTED

10992-65-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) V. BLUE BELL CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (105 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 809).

11152-65-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION #880 (APPLICANT) V. BEAVER LUMBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETROLIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

11191-65-R: THE FIRECO EMPLOYEES' ASSOCIATION (APPLICANT) V. FIRECO SALES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (77 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 813).

11257-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. KEMPTVILLE DISTRICT HOSPITAL (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT AT KEMPTVILLE, SAVE AND EXCEPT CHIEF ENGINEER, PERSONS ABOVE THE RANK OF CHIEF ENGINEER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11268-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 457 (APPLICANT) V. ELLENZWEIG BAKERY LIMITED (RESPONDENT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO-CLC (INTERVENER).

UNIT: "ALL DRIVER SALESMEN OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER (19 EMPLOYEES IN THE UNIT).

11283-65-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. PRESLAND IRON & STEEL LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (10 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 817).

11287-65-R: GENERAL TRUCK DRIVERS UNION, LOCAL 938, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. POWELL TRANSPORT (ONTARIO) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WHITBY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (18 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 818).

11291-65-R: LOCAL UNION 1590 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO-CLC (APPLICANT) V. HORN ELEVATOR LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 50 THE INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS." (103 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11296-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. UNIVERSITY OF OTTAWA (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT AT ITS PLANT LOCATED AT 10 HASTEY STREET, OTTAWA, SAVE AND EXCEPT ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11297-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. COMMISSO BROS. & RACCO ITALIAN BAKERY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (14 EMPLOYEES IN THE UNIT).

11298-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. ITALIAN HOME BAKERY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (12 EMPLOYEES IN THE UNIT).

11300-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. TRE MARI BAKERY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

11301-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. NAPOLI BAKERY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN AND FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

11302-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. CHECCHI D'ORO BAKERY (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

11303-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA,
LOCAL 264 (APPLICANT) V. PANE VITTORIA BAKERY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SHIPPER, MAINTENANCE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11304-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA,
LOCAL 264 (APPLICANT) V. MODERN HOME BAKERY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

11306-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA,
LOCAL 264 (APPLICANT) V. ROMA BAKERY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF SUPERVISOR FOREMAN OR FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

11308-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA,
LOCAL 264 (APPLICANT) V. VICENTINA BAKERY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

11315-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT)
V. CENTRAL SUPERMARKETS LIMITED (SUDBURY I.G.A. CARTIER STORE) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT SUDBURY, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (58 EMPLOYEES IN THE UNIT).

11320-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)
V. T. M. G. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT FOREMEN,
PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

11322-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BOARD OF
EDUCATION OF THE CITY OF OSHAWA (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA REGULARLY EMPLOYED FOR
NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE
THE RANK OF SUPERVISOR, PROFESSIONAL TEACHERS AND OFFICE STAFF." (21 EMPLOYEES
IN THE UNIT).

11328-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. DELMAN MANUFACTURING LTD.
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN
AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND
SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(79 EMPLOYEES IN THE UNIT).

11332-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)
V. T. M. T. CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PRICE EDWARD COUNTY AND IN THE
TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON,
HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF
HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY
IN THE COUNTY OF NORTHUMBERLAND, ENGAGED IN THE OPERATION OF CRANES, SHOVELS,
BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING
AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE
THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11329-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. PITNEY-BOWES OF CANADA
LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO,
SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND SERVICE
STAFF, OFFICE STAFF AND PLANT GUARDS." (36 EMPLOYEES IN THE UNIT).

11331-65-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED
WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA (APPLICANT) V. MCGRAW-HILL COMPANY OF CANADA LIMITED
(RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WAREHOUSE IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

11333-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 1081 (APPLICANT) V. DROGE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY (EXCEPTING THEREFROM THE TOWNSHIPS OF NORMANBY, EGREMONT AND PROTON), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11337-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CLIO:CLC. (APPLICANT) V. BELLDARE MILK PRODUCTS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT INGERSOLL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND DAIRY BAR EMPLOYEES." (7 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 818).

11341-65-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. SUPER CITY DISCOUNT FOODS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN LONDON, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGERS AND MEAT MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, ASSISTANT STORE MANAGER OR MEAT MANAGER, AND PERSONS COVERED BY AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (20 EMPLOYEES IN THE UNIT).

11343-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE UNITED TOWNSHIPS OF DYSART, BRUTON, CLYDE, DUDLEY, GUILFORD, HARBURN, HARCOURT AND HAVELOCK (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT THE ROAD SUPERINTENDENT, PERSONS ABOVE THE RANK OF ROAD SUPERINTENDENT, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (15 EMPLOYEES IN THE UNIT).

11344-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE UNITED TOWNSHIPS OF DYSART, BRUTON, CLYDE, DUDLEY, GUILFORD, HARBURN, HARCOURT AND HAVELOCK (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT THE CLERK-TREASURER, PERSONS ABOVE THE RANK OF CLERK-TREASURER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

11351-65-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION LOCAL 254 (APPLICANT) V. DIANA SWEETS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE COACH 'N FOUR DINING ROOM, STORE 68 AT THE DON MILLS SHOPPING CENTRE IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (25 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11352-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. LA RINASCENTE BAKERY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

11356-65-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. VERSAFOODS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS VENDING DIVISION EMPLOYED AT OR WORKING OUT OF HAMILTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

11358-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. THE CARTER CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

11360-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. NU STYLE CONSTRUCTION COMPANY (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN ELLIOT LAKE AND TOWNSHIP 149 AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO ALL IN THE DISTRICT OF ALGOMA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11366-65-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT)
V. LIBERTY BUILDING LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

11367-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. KENT STEEL PRODUCTS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENT EMPLOYED DURING THE SCHOOL VACATION PERIOD." (132 EMPLOYEES IN THE UNIT).

11368-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA A.F.L. C.I.O. C.L.C. (APPLICANT) V. DROGE CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY (EXCEPTING THEREFROM THE TOWNSHIPS OF NORMANBY, EGREMONT AND PROTON), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11370-65-R: WOODSTOCK CUSTODIANS ASSOCIATION (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF WOODSTOCK (RESPONDENT) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT BUSINESS ADMINISTRATOR, PERSONS ABOVE THE RANK OF BUSINESS ADMINISTRATOR, PROFESSIONAL TEACHING STAFF, OFFICE STAFF, CHIEF ENGINEER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (35 EMPLOYEES IN THE UNIT).

11380-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. TRI-SPAN CONSTRUCTION COMPANY LIMITED. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11398-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 493 (APPLICANT) V. HILL-CLARK-FRANCIS, LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11404-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. COADY STORE FIXTURES & EQUIPMENT CO. LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

11407-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA (APPLICANT) V. C. SANSONE CONSTRUCTION (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MALBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11416-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 597 (APPLICANT) V. CHEMONG CONST. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON AND HALDIMAND IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

11182-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. JOHNSON MATTHEY & MALLORY LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANTS IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST

5

NUMBER OF PERSONS WHO CAST BALLOTS

5

NUMBER OF BALLOTS MARKED IN FAVOUR
OF APPLICANT

4

NUMBER OF BALLOTS MARKED IN FAVOUR
OF INTERVENER

1

(SEE INDEXED ENDORSEMENT PAGE 813).

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

10916-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. ELECTRONIC MATERIELS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF OTTAWA, SAVE AND EXCEPT FOREMEN, SUPERVISORS AND SECTION HEADS, PERSONS ABOVE THE RANK OF FOREMAN, SUPERVISOR AND SECTION HEAD, OFFICE AND SALES STAFF." (152 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST	96
NUMBER OF BALLOTS CAST	95
NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	64
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	30

10940-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. PEEL MEMORIAL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN THE BOILER ROOM OF THE RESPONDENT'S HOSPITAL AT BRAMPTON, SAVE AND EXCEPT THE CHIEF ENGINEER." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED	4

NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0

(SEE INDEXED ENDORSEMENT PAGE 807).

11249-65-R: LOCAL 530 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. MOORE MUNICIPAL TELEPHONE SYSTEM (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN THE TOWNSHIPS OF MOORE, DAWN, SOMBRA AND ENNISKILLEN IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE WORKERS AND TELEPHONE OPERATORS." (13 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST	13
NUMBER OF BALLOTS CAST	13
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3

APPLICATIONS FOR CERTIFICATION DISMISSED DURING FEBRUARY

NO VOTE CONDUCTED

11280-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL UNION #721 (APPLICANT) V. CHUBB-MOSLER AND TAYLOR SAFES LTD. (RESPONDENT) V. LOCAL 678 INTERNATIONAL CHEMICAL WORKERS UNION (INTERVENER). (29 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 816).

11323-65-R: LOCAL UNION # 1940, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. BOHN TILE COMPANY LIMITED (RESPONDENT). (2 EMPLOYEES).

11347-65-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. B.I.C. LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (44 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 819).

11353-65-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 91 (APPLICANT) V. KEYSTONE CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT EXCLUDING MARLBOROUGH TOWNSHIP, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (40 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 821).

11357-65-R: LOCAL UNION # 1940, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. NORTHERN FLOORING (RESPONDENT) (3 EMPLOYEES)

(SEE INDEXED ENDORSEMENT PAGE 822).

11362-65-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION A.F.L.-C.I.O. C.L.C. (APPLICANT) V. THE KELVIN-THOMPSON COMPANY LIMITED (RESPONDENT) V. THE UNITED STEELWORKERS OF AMERICA (INTERVENER). (19 EMPLOYEES)

(SEE INDEXED ENDORSEMENT PAGE 822).

11364-65-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION. LOCAL 254 (APPLICANT) V. THE BOARD OF EDUCATION FOR THE TOWNSHIP OF ETOBICOKE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE OPERATION OF SCHOOL CAFETERIAS IN THE TOWNSHIP OF ETOBICOKE, SAVE AND EXCEPT CAFETERIA MANAGERS, PERSONS ABOVE THE RANK OF CAFETERIA MANAGER, OFFICE STAFF, PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (70 EMPLOYEES IN THE UNIT).

THE APPLICANT SOUGHT A UNIT OF EMPLOYEES EMPLOYED AT SCARLETT HEIGHTS COLLEGIATE CAFETERIA - A COLLEGIATE WITHIN THE JURISDICTION OF THE RESPONDENT. THERE WERE ELEVEN COLLEGIATES AND TWO VOCATIONAL SCHOOLS IN THAT JURISDICTION OF WHICH TWELVE HAVE CAFETERIAS. THE RESPONDENT TOOK THE POSITION THAT THE BARGAINING UNIT SHOULD INCLUDE ALL EMPLOYEES ENGAGED IN THE OPERATION OF SCHOOL CAFETERIAS THROUGHOUT THE TOWNSHIP OF ETOBICOKE.

IN THE CASES OF SCHOOL BOARDS THE BOARD HAS INVARIABLY FOUND THAT ALL EMPLOYEES OF THE SCHOOL BOARD COMING WITHIN CERTAIN CLASSIFICATIONS CONSTITUTE AN APPROPRIATE BARGAINING UNIT AND THERE APPEARED TO BE NO REASON FOR DEPARTING FROM THIS ESTABLISHED PATTERN IN THE PRESENT CASE.

11420-65-R: OPERATIVE PLASTERER'S AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 159 (APPLICANT) V. CULP BROS. LTD. (RESPONDENT) V. BRICKLAYERS', MASONS' AND PLASTERERS' INTERNATIONAL UNION, LOCAL 12 (INTERVENER). (7 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 823).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

10430-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. THE CANADIAN CHROMALOX COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, DRAFTSMEN, LABORATORY TECHNICIANS, MODEL ROOM TECHNICIANS, SPECIFICATION WRITERS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (267 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	266
NUMBER OF BALLOTS CAST	267
NUMBER OF BALLOTS SPOILED	2
NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	103
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	160

11294-65-R: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES LOCAL UNION No. 352, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DELANY & PETTIT INDUSTRIES LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (65 EMPLOYEES).

NUMBER OF NAMES ON REVISED VOTERS' LIST	64
NUMBER OF BALLOTS CAST	64
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	22
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	42

11127-65-R: THE HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, LOCAL 412 A.F. OF L.,-C.I.O.,-C.L.C. (APPLICANT) V. ALGONQUIN HOTEL (Soo) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS ALGONQUIN HOTEL IN SAULT STE. MARIE, SAVE AND EXCEPT THE MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (12 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST	12
NUMBER OF BALLOTS CAST	12
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7

11181-65-R: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK & DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. COCA-COLA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT FOREMEN, SPECIAL SALESMEN, PERSONS ABOVE THE RANK OF FOREMAN AND SPECIAL SALESMAN, AND OFFICE STAFF." (29 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	26
NUMBER OF BALLOTS CAST	26
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	16

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING FEBRUARY

11334-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. METROPOLITAN DIOCESAN ROMAN CATHOLIC HIGH SCHOOL BOARD OF WINDSOR (RESPONDENT). (3 EMPLOYEES).

11363-65-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION A.F.L. C.I.O. C.L.C.
(APPLICANT) V. FALCON EQUIPMENT DISTRIBUTORS (RESPONDENT) (7 EMPLOYEES).

11405-65-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION, AFL. CIO. CLC
(APPLICANT) V. TWEED VENEERS LTD. (RESPONDENT) V. TWEED VENEERS LIMITED
SHOP UNION (INTERVENER) (39 EMPLOYEES).

11418-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL
UNION 93 (APPLICANT) V. UNI-FORM BUILDERS LTD. (RESPONDENT). (15 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF
DURING FEBRUARY

11324-65-R: PAUL BRILLINGER (APPLICANT) V. UNITED ELECTRICAL, RADIO AND
MACHINE WORKERS OF AMERICA, LOCAL 514 (RESPONDENT) V. GLOBELITE BATTERIES
LIMITED (EASTERN DIVISION) (INTERVENER). (WITHDRAWN). (65 EMPLOYEES).

11339-65-R: ANGELO DALBELLO (APPLICANT) V. INTERNATIONAL MOLDERS AND
ALLIED WORKERS UNION, LOCAL 28, AFL.CIO.CLC. (RESPONDENT) V. KENT STEEL
PRODUCTS LTD. (INTERVENER). (WITHDRAWN). (67 EMPLOYEES).

11361-65-R: ANNE RESE, JOHN FARRUGIA AND GORDON PERRY (APPLICANTS) V.
INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT). (GRANTED) (130 EMPLOYEES).

(RE: BRUNSWICK OF CANADA LTD.
COOKSVILLE, ONTARIO.)

(SEE INDEXED ENDORSEMENT PAGE 824).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING FEBRUARY

11236-65-R: RETAIL CLERKS UNION LOCAL NO. 832 (APPLICANT) V. DRYDEN 5¢
TO \$1.00 STORE LIMITED (RESPONDENT). (WITHDRAWN).

11237-65-R: RETAIL CLERKS UNION LOCAL NO. 832 (APPLICANT) V. RED & WHITE
FOODLAND (RESPONDENT). (GRANTED).

11238-65-R: RETAIL CLERKS UNION LOCAL NO. 832 (APPLICANT) V. SHOP EASY
STORES LIMITED (RESPONDENT). (GRANTED).

11239-65-R: RETAIL CLERKS UNION LOCAL NO. 832 (APPLICANT) V. SHOP-EASY
STORES LIMITED (RESPONDENT). (GRANTED).

11240-65-R: RETAIL CLERKS UNION LOCAL No. 832 (APPLICANT) v. SHOP-EASY STORES LIMITED (RESPONDENT). (GRANTED).

11241-65-R: RETAIL CLERKS UNION LOCAL No. 832 (APPLICANT) v. CANADA SAFEWAY LIMITED (RESPONDENT). (GRANTED).

11242-65-R: RETAIL CLERKS UNION LOCAL No. 832 (APPLICANT) v. CANADA SAFEWAY LIMITED (RESPONDENT). (GRANTED).

11243-65-R: RETAIL CLERKS UNION LOCAL No. 832 (APPLICANT) v. SHOP-EASY STORES LIMITED (RESPONDENT). (GRANTED).

11244-65-R: RETAIL CLERKS UNION LOCAL No. 832 (APPLICANT) v. CANADA SAFEWAY LIMITED (RESPONDENT). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING FEBRUARY

11349-65-U: THE OSHAWA TIMES, A DIVISION OF CANADIAN NEWSPAPERS LIMITED (APPLICANT) v. DAVID CLEMENTS ET AL (RESPONDENTS). (WITHDRAWN).

11350-65-U: THE OSHAWA TIMES, A DIVISION OF CANADIAN NEWSPAPERS LIMITED (APPLICANT) v. OSBORNE ALTON ET AL (RESPONDENTS). (WITHDRAWN).

11354-65-U: MEN'S CLOTHING MANUFACTURERS ASSOCIATION OF ONTARIO, AND FIRTH BROS. LIMITED (APPLICANTS) v. JOSEPH WILSON O'CONNOR, WILLIAM G. TURNER, JAMES BLACK, DANIEL DEMERS, LLOYD HARRINGTON, PIETER B. VAN DER WEL, FRANK MANCINI, ROBERT DRAKER, ALFRED ARSENAULT, BRUNO MOLINARO, GARY WADE AND FRANK A AQUINO (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 825).

11382-65-U: RUSSELL-HIPWELL ENGINES LIMITED (APPLICANT) v. UNITED STEELWORKERS OF AMERICA (RESPONDENT). (WITHDRAWN).

11402-65-U: ELLIS-DON LIMITED (APPLICANT) v. PIETRO SCAFFIDI ET AL (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING FEBRUARY

10640-65-U: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, A.F. OF L. -C.I.O. (APPLICANT) v. COOPER-WEEKS LIMITED (RESPONDENT). (WITHDRAWN).

11189-65-U: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. INSTRUMENTS (1951) LIMITED (RESPONDENT). (WITHDRAWN).

11190-65-U: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. INSTRUMENTS (1951) LIMITED (RESPONDENT). (WITHDRAWN).

11245-65-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CANADIAN STANDARDS ASSOCIATION TESTING LABORATORIES (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 826).

11258-65-U: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 373 (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF NORTH YORK (RESPONDENT).

DECISION OF THE BOARD:

"IN GRANTING LEAVE TO INSTITUTE A PROSECUTION, THE BOARD SELDOM GIVES REASONS FOR ITS DECISION, BECAUSE OF THE DANGER THAT SUCH REASONS MIGHT BE INTERPRETED AS AN EXPRESSION OF OPINION BY THE BOARD ON THE MERITS OF THE ALLEGATIONS MADE BY THE APPLICANT, WHETHER IT BE AS TO FACTS OR LAW. IN THE INSTANT CASE, THE FACTS ARE CLEAR. THE ISSUES RAISED BY COUNSEL IN THEIR ARGUMENTS. HOWEVER, INVOLVE AN ARGUABLE QUESTION OF LAW. THE BOARD THEREFORE CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT IN THIS MATTER FOR THE FOLLOWING OFFENCE OR OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

THAT THE RESPONDENT, BY A BY-LAW ENACTED ON THE 30TH DAY OF DECEMBER 1965, TO COME INTO FORCE ON JANUARY 1, 1966, ALTERED THE RATES OF WAGES, TERMS AND CONDITIONS OF EMPLOYMENT, RIGHTS AND PRIVILEGES OF THE APPLICANT AND THE EMPLOYEES OF THE RESPONDENT WITHOUT THE CONSENT OF THE APPLICANT AND CONTRARY TO SECTION 59(1) OF THE LABOUR RELATIONS ACT.

THE APPROPRIATE DOCUMENTS WILL ISSUE."

11316-65-U: SCM (CANADA) LIMITED (APPLICANT) V. UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA AND ITS LOCAL 514 (RESPONDENT). (WITHDRAWN).

11321-65-U: CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 749 (APPLICANT) V. THE CORPORATION OF THE TOWN OF PORT HOPE (RESPONDENT). (WITHDRAWN).

11355-65-U: MEN'S CLOTHING MANUFACTURERS ASSOCIATION OF ONTARIO, AND FIRTH BROS. LIMITED (APPLICANTS) V. ROBERT DRAKER, GARY WADE, FRANK MANCINI, JAMES BLACK, JOSEPH W. O'CONNOR, WILLIAM G. TURNER, ALFRED ARSENAULT, DANIEL DEMERS, FRANK A. AQUINO, BRUNO MOLINARO, PETER VAN DER WEL, LLOYD HARRINGTON. (RESPONDENTS). (GRANTED).

11374-65-U: TORONTO NEWSPAPER GUILD, LOCAL 87, AMERICAN NEWSPAPER GUILD (APPLICANT) V. CANADIAN NEWSPAPERS LIMITED, COLIN MCCONECHY, ROBERT D. MALCOLMSON, OMER FONTAINE, LESLIE LEITH (RESPONDENTS). (WITHDRAWN).

11383-65-U: RUSSEL-HIPWELL ENGINES LIMITED (APPLICANT) V. UNITED STEELWORKERS OF AMERICA AND A. SHEPPARD (RESPONDENT). (WITHDRAWN).

11384-65-U: RUSSEL-HIPWELL ENGINES LIMITED (APPLICANT) V. C. M. MCMILLAN ET AL (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF

DURING FEBRUARY

10868-65-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. FORD MOTOR COMPANY OF CANADA, LIMITED (RESPONDENT).

10948-65-U: LOCAL 280 OF THE HOTEL & RESTAURANT EMPLOYEE'S AND BARTENDER'S INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) V. EASTWOOD PARK HOTEL AND ROBERT LAURENT (RESPONDENTS).

- AND -

11000-65-U: LOCAL 280 OF THE HOTEL & RESTAURANT EMPLOYEE'S AND BARTENDER'S INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) V. EASTWOOD PARK HOTEL AND ROBERT LAURENT (RESPONDENTS).

(THE ABOVE MATTERS WERE CONSOLIDATED).

(REASONS TO BE ISSUED AT A LATER DATE).

11175-65-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AND LOCAL 641 (COMPLAINANT) V. ELECTRONIC MATERIALS OF CANADA LIMITED (RESPONDENT).

11310-65-U: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (COMPLAINANT) V. COOPER-WEEKS LIMITED (RESPONDENT).

11311-65-U: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. SKENE CARTAGE COMPANY LIMITED (RESPONDENT).

11318-65-U: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. SKENE CARTAGE COMPANY LIMITED (RESPONDENT).

11327-65-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. B.D.C. LTD. INC. SUBSIDIARY OF BANKERS DISPATCH CORP. (RESPONDENT).

11340-65-U: ORGANIZING DIVISION OF LOCAL UNION 46 UNITED ASSOCIATION OF JOURNEYMAN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (COMPLAINANT) V. AUTOMATIC FUELS LIMITED, 122 BROCK AVENUE, TORONTO 3, ONTARIO (RESPONDENT).

11365-65-U: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (COMPLAINANT) V. DIANA SWEETS LTD. (RESPONDENT).

11376-65-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. GENERAL IMPACT EXTRUSIONS MFG. LIMITED (RESPONDENT).

11381-65-U: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. SKENE CARTAGE COMPANY (RESPONDENT).

11396-65-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. GENERAL IMPACT EXTRUSIONS MFG. LIMITED (RESPONDENT).

APPLICATION UNDER SECTION 66(6) (REVIEW OF INTERIM ORDER OR DIRECTION OF JURISDICTIONAL DISPUTES COMMISSION) DISPOSED OF DURING FEBRUARY

10709-65-M: WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 97 (COMPLAINANT) V. DONALDSON-BARRON COMPANY LTD., AND UNITED BROTHERHOOD OF CARPENTERS, LOCAL 1747 (RESPONDENTS).

APPLICATION FOR DETERMINATION UNDER SECTION 79 DISPOSED OF DURING FEBRUARY

11226-65-M: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. RAMSAY INDUSTRIES LIMITE (RESPONDENT) V. BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, GLASS WORKS SECTION OTTAWA LOCAL 200 (INTERVENER).

REFERENCE TO BOARD PURSUANT TO SECTION 79A OF THE ACT DISPOSED OF
DURING FEBRUARY

11325-65-M: GENERAL TRUCK DRIVERS UNION, LOCAL 938, (AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA) (TRADE UNION) V. WM. DALLEY CARTAGE COMPANY LIMITED (EMPLOYER).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION

11329-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. PITNEY-BOWES OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

INDEXED ENDORSEMENTS - CERTIFICATION

10940-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. PEEL MEMORIAL HOSPITAL (RESPONDENT) AND INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D. McDERMOTT AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. SULLIVAN FOR THE APPLICANT, G.G. SMITH AND A.L. POST FOR THE RESPONDENT, WM. WALKER FOR INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796, MARTIN LEVINSON AND H. WALKER FOR BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 204.

DECISION OF THE BOARD: (FEBRUARY 14, 1966)

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED BY THE BOARD IN ITEM 2 OF ITS DECISION DATED OCTOBER 29TH, 1965, CONSISTING OF ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN THE BOILER ROOM OF THE RESPONDENT'S HOSPITAL AT BRAMPTON, SAVE AND EXCEPT THE CHIEF ENGINEER.

2. AS A RESULT OF A QUESTION WHICH AROSE AS TO THE ELIGIBILITY OF FOUR PERSONS TO VOTE, THE BOARD DIRECTED THAT THE FOUR PERSONS, E. MONAGHAN, R. MASTERTSON, W. RUSSELL AND H. SILVERTHORNE, BE PERMITTED TO VOTE AND THAT THEIR

BALLOTS BE SEGREGATED AND NOT COUNTED PENDING A RULING BY THE BOARD AS TO THEIR ELIGIBILITY TO BE INCLUDED IN THE BARGAINING UNIT DESCRIBED BY THE BOARD IN ITS DECISION ABOVE REFERRED TO AND FURTHER DIRECTED THAT THE FOUR PERSONS BE EXAMINED IN ORDER TO DETERMINE THEIR DUTIES AND RESPONSIBILITIES.

3. FOLLOWING THE TAKING OF THE REPRESENTATION VOTE THE BOARD DIRECTED THAT THIS MATTER BE LISTED FOR HEARING TO ENTERTAIN REPRESENTATIONS OF THE PARTIES ON THE MATTERS CONTAINED IN THE REPORT OF THE EXAMINER.

4. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT, INCLUDING THE EVIDENCE THAT EDWARD MONAGHAN, A PERSONS DESCRIBED BY THE RESPONDENT AS ASSISTANT CHIEF ENGINEER, HAS ELEVEN PERSONS REPORTING TO HIM, THAT HE HAS HIRED TWO PERSONS AFTER HAVING INTERVIEWED THEM, THAT HE HAS DISCIPLINED EMPLOYEES BY ADMONISHING THEM, THAT HE ASSIGNS WORK AND SUPERVISES EMPLOYEES, THAT EMPLOYEES INITIALLY SEE HIM AS THE FIRST STEP IN THE GRIEVANCE PROCEDURE, THE BOARD FINDS THAT EDWARD MONAGHAN EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND IS NOT ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT.

5. THE PARTIES AGREED THAT MR. MASTERSON, MR. RUSSELL AND MR. SILVERTHORNE, WERE MAINTENANCE MEN EMPLOYED AT THE HOSPITAL AND WERE NOT PERSONS PRIMARILY ENGAGED AS HELPERS IN THE BOILER ROOM OF THE RESPONDENT.

6. THE PARTIES FURTHER AGREED THAT BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 204 WAS CERTIFIED FOR ALL EMPLOYEES AT THE RESPONDENT'S HOSPITAL IN 1957. SUBSEQUENTLY INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 SUCCEEDED IN CARVING OUT ITS CRAFT UNIT FROM THE UNIT REPRESENTED BY LOCAL 204 AND THE UNIT FOR WHICH LOCAL 796 WAS CERTIFIED WAS IN THE TERMS OF THE UNIT DESCRIBED IN ITEM 2 OF THE BOARD'S DECISION OF OCTOBER 29TH, 1965, IN THIS MATTER.

7. THE PARTIES FURTHER AGREED THAT WHEN THE HOSPITAL WAS FIRST ESTABLISHED PERSONS PRIMARILY EMPLOYED AS HELPERS IN THE BOILER ROOM ALSO PERFORMED CERTAIN MAINTENANCE WORK AT THE HOSPITAL. HOWEVER, AS THE HOSPITAL EXPANDED A MAINTENANCE STAFF WAS HIRED WHO PERFORMED MAINTENANCE WORK ONLY AND WERE NOT PRIMARILY EMPLOYED AS HELPERS IN THE BOILER ROOM. WHEN SUCH MAINTENANCE PERSONNEL WERE EMPLOYED, THE RESPONDENT AGREED TO PERMIT THEM TO BE REPRESENTED BY LOCAL 796. HOWEVER, LOCAL 204 WAS NOT A PARTY TO SUCH AGREEMENT.

8. THE APPLICANT IN THIS MATTER APPLIED TO BE CERTIFIED FOR ITS USUAL CRAFT UNIT BUT NOW CLAIMS IT SHOULD ALSO HAVE THE RIGHT TO REPRESENT THE MAINTENANCE PERSONNEL WHO WERE REPRESENTED BY LOCAL 796 AT THE TIME THE APPLICATION WAS MADE.

9. LOCAL 796 CLAIMED TO REPRESENT THE MAINTENANCE PERSONNEL AT THE TIME THE APPLICATION WAS MADE BECAUSE THE RESPONDENT HAD VOLUNTARILY RECOGNIZED LOCAL 796 AS THE BARGAINING AGENT FOR SUCH PERSONS, HOWEVER, THERE CAN BE NO

DOUBT THAT AT THE TIME THE RESPONDENT AGREED THAT LOCAL 796 REPRESENT SUCH EMPLOYEES, LOCAL 204 WAS ENTITLED BY REASON OF ITS CERTIFICATION TO REPRESENT THOSE EMPLOYEES AND ITS BARGAINING RIGHTS COULD NOT BE DESTROYED OR IMPAIRED BY THE UNILATERAL ACT OF THE RESPONDENT.

10. HAVING REGARD TO THE TERMS OF A RECENT COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND LOCAL 204 WHICH SPECIFICALLY COVERS MAINTENANCE EMPLOYEES, IT IS APPARENT THAT LOCAL 204 HAS NOT ABANDONED ITS BARGAINING RIGHTS WITH RESPECT TO SUCH PERSONS AND ACCORDINGLY IS STILL ENTITLED TO REPRESENT THEM.

11. THE BOARD THEREFORE FINDS THAT R. MASTERSON, W. RUSSELL AND H. SILVERTHORNE, THE MAINTENANCE PERSONNEL AT THE RESPONDENT'S HOSPITAL, ARE NOT PERSONS PRIMARILY ENGAGED AS HELPERS IN THE BOILER ROOM OF THE RESPONDENT AND ACCORDINGLY WERE NOT ENTITLED TO CAST A BALLOT IN THE REPRESENTATION VOTE DIRECTED IN THIS MATTER.

10992-65-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) v. BLUE BELL CANADA LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: MARTIN LEVINSON AND W. FOLEY FOR THE APPLICANT, GEORGE S.P. FERGUSON, Q.C., AND D.W. WATT FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, DEPUTY VICE-CHAIRMAN AND BOARD MEMBER E. BOYER. (FEBRUARY 2, 1966).

1. THIS IS AN APPLICATION FOR CERTIFICATION MADE IN THE NAME OF UNITED TEXTILE WORKERS OF AMERICA, LOCAL 467 (HEREINAFTER REFERRED TO AS LOCAL 467).

2. THE APPLICATION FOR CERTIFICATION (FORM 1) WAS SIGNED BY MR. WILLIAM FOLEY, THE CANADIAN CO-DIRECTOR OF UNITED TEXTILE WORKERS OF AMERICA (HEREINAFTER REFERRED TO AS THE INTERNATIONAL). MR. FOLEY SIGNED THE STATEMENT ON STATUS OF TRADE UNION (FORM 8) AND THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 9). IN BOTH THESE FORMS HIS POSITION IS INDICATED AS CANADIAN CO-DIRECTOR.

3. ALL OF THE MEMBERSHIP DOCUMENTS FILED IN SUPPORT OF THE APPLICATION WERE COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT CARDS OF THE INTERNATIONAL

4. SINCE LOCAL 467 HAD NEVER PREVIOUSLY BEEN RECOGNIZED AS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT, THE REGISTRAR, IN AN ATTEMPT BY THE BOARD TO AVOID UNDUE DELAY OR ADJOURNMENTS, ADVISED THE APPLICANT BY LETTER DATED OCTOBER 27TH, 1965, THAT "YOU MUST BE PREPARED AT THE HEARING SCHEDULED IN THIS MATTER TO SATISFY THE BOARD IN ACCORDANCE WITH ITS USUAL PRACTICE THAT YOUR ORGANIZATION IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT."

5. ON NOVEMBER 1ST, 1965, THE DAY PRIOR TO THE TERMINAL DATE OF THIS APPLICATION, MR. FOLEY REQUESTED THE BOARD, BY LETTER, TO AMEND THE NAME OF THE APPLICANT IN THIS MATTER BY SUBSTITUTING THE INTERNATIONAL FOR LOCAL 467. MR. FOLEY ALSO FILED AT THAT TIME, ON BEHALF OF THE INTERNATIONAL, A COPY OF FORM 8 AND A COPY OF FORM 9 SIGNED BY HIM AS CANADIAN Co-DIRECTOR OF THE INTERNATIONAL.

6. AT THE FIRST HEARING, ON NOVEMBER 9TH, 1965, THE APPLICANT MOVED THE AMENDMENT REQUESTED IN ITS LETTER OF NOVEMBER 1ST, 1965. THE BOARD WAS ADVISED THAT THE FORMAL DOCUMENTATION SETTING UP LOCAL 467 HAD NOT BEEN COMPLETED AND LOCAL 467 HAD NOTHING IN WRITING TO EVIDENCE ITS EXISTENCE AS A TRADE UNION ON NOVEMBER 9TH, 1965, AND REQUESTED AN OPPORTUNITY TO FILE THE DOCUMENTS WHEN RECEIVED BY IT. MR. FOLEY TESTIFIED THAT HE WAS INFORMED BY TELEPHONE BY AN OFFICER OF THE INTERNATIONAL ON OCTOBER 18TH, 1965, THAT #467 HAD BEEN ASSIGNED TO THE LOCAL. IT WAS ON THE BASIS OF THIS TELEPHONE CONVERSATION THAT MR. FOLEY BELIEVED THAT LOCAL 467 CAME INTO EXISTENCE AS A TRADE UNION ON OCTOBER 18TH, 1965, AND WAS ELIGIBLE TO MAKE THE APPLICATION IN THIS MATTER. HOWEVER, MR. FOLEY ACKNOWLEDGED THAT HE HELD NO OFFICE IN LOCAL 467 AND THAT NO OFFICERS HAD BEEN ELECTED AND NO MEETINGS OF THE MEMBERSHIP HAD BEEN HELD SINCE THE NUMBER WAS ASSIGNED.

7. THE REASON GIVEN BY MR. FOLEY FOR THE REQUEST TO AMEND THE NAME OF THE APPLICANT CONCERNED THE FACT THAT THE MEMBERSHIP EVIDENCE WAS IN THE NAME OF THE INTERNATIONAL RATHER THAN THE LOCAL. HOWEVER, THE REQUEST WAS APPARENTLY PRECIPITATED BY THE REGISTRAR'S LETTER OF OCTOBER 27TH, 1965 WHICH DEALT WITH THE NECESSITY OF PRODUCING DOCUMENTARY EVIDENCE OF THE LOCAL'S EXISTENCE. THE BOARD RESERVED ITS DECISION ON THE MOTION.

8. SUBSEQUENT TO THE FIRST HEARING, THE BOARD BY ITS DECISION OF NOVEMBER 22ND, 1965, DETERMINED THAT THE CHARTER AND A LETTER FROM THE INTERNATIONAL PRESIDENT, WHICH WERE BOTH DATED NOVEMBER 9TH, 1965, AND WHICH WERE FILED SUBSEQUENT TO THE HEARING BY THE BOARD OF THAT DATE, WOULD BE ADMISSABLE EVIDENCE.

9. A SECOND HEARING WAS HELD ON DECEMBER 22ND, 1965, TO PERMIT THE RESPONDENT AN OPPORTUNITY TO CROSS-EXAMINE MR. FOLEY ON THE EVIDENCE WHICH WAS FILED SUBSEQUENT TO THE HEARING.

10. PRIOR TO DEALING WITH THE MERITS OF THIS APPLICATION, THE BOARD IS FACED WITH TWO PRELIMINARY QUESTIONS. THE FIRST QUESTION TO BE ANSWERED IS "IS THE BOARD SATISFIED THAT LOCAL 467 IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J)?" THE SECOND QUESTION IS "SHOULD THE BOARD GRANT THE MOTION TO AMEND THE NAME OF THE APPLICANT?"

11. IT WOULD APPEAR FROM THE EVIDENCE IN THIS MATTER THAT WHILE A CHARTER WAS PREPARED AND ISSUED ON NOVEMBER 9TH, 1965, EFFECTIVE AS OF OCTOBER 18TH, 1965, ON THE DATE THIS APPLICATION WAS MADE AND FOR THAT MATTER, AS OF THE DATE OF THE SECOND HEARING IN THIS MATTER, NO MEETINGS OF MEMBERS OF LOCAL 467 HAD BEEN HELD AND NO OFFICERS HAD BEEN ELECTED. ON THE DATE THIS APPLICATION

WAS MADE, THERE WAS NO ORGANIZATION ESTABLISHED PURSUANT TO THE CHARTER WHICH HAD BEEN ISSUED BY THE INTERNATIONAL. ALL THAT WAS IN EXISTENCE WAS SOMETHING WHICH MIGHT BE DESCRIBED AS A "PAPER LOCAL".

12. HAVING REGARD TO THE DECISION OF THE BOARD IN THE ABITIBI POWER & PAPER COMPANY LIMITED CASE, BOARD FILE No. 10731-65-R, OCTOBER 14TH, 1965, THE BOARD FINDS THAT SINCE NO OFFICERS HAD BEEN ELECTED AND NO RESPONSIBLE OFFICIALS HAD BEEN APPOINTED BY THE MEMBERS OF LOCAL 467, LOCAL 467 IS NOT A VIABLE ENTITY WHICH CAN BE CONSIDERED BY THE BOARD TO BE A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT. IN ARRIVING AT THIS DECISION THE BOARD HAS NOTED THE DECISION OF THE CANADA LABOUR RELATIONS BOARD, DATED DECEMBER 15TH, 1965, IN THE CANADIAN BROADCASTING CORPORATION CASE, WHICH READS IN PART AS FOLLOWS; AN ORGANIZATION SEEKING CERTIFICATION AS A TRADE UNION

"SHALL BE IN A POSITION TO SATISFY THE BOARD THAT IS IS A VIABLE TRADE UNION ORGANIZATION OPERATING UNDER A CONSTITUTION WHICH IS BINDING UPON ITS MEMBERS AND OFFICERS AND HAS DULY ELECTED OR APPOINTED OFFICERS OR OTHER AUTHORIZED PERSONS CLOTHED WITH AUTHORITY TO ACT ON BEHALF OF THE UNION AND BY WHOSE ACTS THE ORGANIZATION AND ITS MEMBERS MAY BE BOUND IN ACCORDANCE WITH THE PROVISIONS OF ITS CONSTITUTION OR BY-LAWS."

13. THE BOARD THEREFORE FINDS THAT AS OF THE DATE THIS APPLICATION WAS MADE LOCAL 467 WAS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

14. WE NOW MUST DEAL WITH THE MOTION TO AMEND THE NAME OF THE APPLICANT IN THIS MATTER BY SUBSTITUTING THE NAME OF THE INTERNATIONAL. THE BOARD'S JURISDICTION TO MAKE SUCH AN AMENDMENT IS FOUND IN SECTION 78 OF THE ACT WHICH READS AS FOLLOWS:

78. "WHERE IN ANY PROCEEDINGS BEFORE THE BOARD THE BOARD IS SATISFIED THAT A BONA FIDE MISTAKE HAS BEEN MADE WITH THE RESULT THAT THE PROPER PERSON OR TRADE UNION HAS NOT BEEN NAMED AS A PARTY OR HAS BEEN INCORRECTLY NAMED, THE BOARD MAY ORDER THE PROPER PERSON OR TRADE UNION TO BE SUBSTITUTED OR ADDED AS A PARTY TO THE PROCEEDINGS OR TO BE CORRECTLY NAMED UPON SUCH TERMS AS APPEAR TO THE BOARD TO BE JUST."

15. SINCE IT HAS BEEN THE LONG ESTABLISHED PRACTICE OF THE BOARD TO TREAT MEMBERSHIP IN THE INTERNATIONAL AS MEMBERSHIP IN A LOCAL UNION OF THE INTERNATIONAL, THE BOARD MUST ACCORDINGLY FIND THAT THERE WAS NO MISTAKE, BONA FIDE OR OTHERWISE, WITH RESPECT TO THE MEMBERSHIP EVIDENCE WHICH WOULD JUSTIFY THE AMENDMENT SOUGHT.

16. HOWEVER, AT THE TIME THE APPLICATION WAS MADE, AND FOR THAT MATTER AT THE TIME OF THE SECOND HEARING IN THIS MATTER, MR. FOLEY WAS OF OPINION THAT LOCAL 467 WAS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE ACT WHICH WOULD BE RECOGNIZED BY THE BOARD. IN THIS, MR. FOLEY WAS MISTAKEN. THE BOARD IS SATISFIED THAT THIS MISTAKE OF MR. FOLEY IS A BONA FIDE MISTAKE. TO DECIDE OTHERWISE, THE BOARD WOULD HAVE TO FIND THAT MR. FOLEY DELIBERATELY APPLIED IN THE NAME OF LOCAL 467 WITH THE KNOWLEDGE THAT THE BOARD WOULD FIND THAT LOCAL 467 WAS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE ACT. WHILE WE MIGHT FIND THAT THE MANNER IN WHICH THE INTERNATIONAL ASSIGNS AND ISSUES CHARTERS IS NOT IN ACCORDANCE WITH THE DEGREE OF CARE ONE WOULD NORMALLY EXPECT, WE DO FIND THAT IN ASSIGNING THE CHARTER TO LOCAL 467 NO ATTEMPT WAS MADE TO MISLEAD ANYONE OR TO DELIBERATELY CREATE CONFUSION. HOWEVER, MR. FOLEY BELIEVED THAT LOCAL 467, ONCE HAVING A CHARTER ASSIGNED BY THE INTERNATIONAL, COULD APPLY FOR CERTIFICATION.

17. THE BOARD ACCORDINGLY IS SATISFIED THAT MR. FOLEY MADE A BONA FIDE MISTAKE WITHIN THE MEANING OF SECTION 78 OF THE ACT, WITH THE RESULT THAT THE PROPER TRADE UNION HAS NOT BEEN NAMED AS A PARTY OR IN ALL THE CIRCUMSTANCES OF THIS CASE THE APPLICANT HAS BEEN INCORRECTLY NAMED.

18. THEREFORE, THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 78 OF THE ACT AMENDS THE NAME OF THE APPLICANT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION BY SUBSTITUTING THEREFOR "UNITED TEXTILE WORKERS OF AMERICA".

19. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

20. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

21. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

22. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER F. W. MURRAY: (FEBRUARY 2, 1966).

I DISSENT.

1. WHILE I AGREE WITH THE DECISION OF THE BOARD THAT AS OF THE DATE THIS APPLICATION WAS MADE, THE UNITED TEXTILE WORKERS OF AMERICA, LOCAL 467 (THE APPLICANT) WAS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF

THE LABOUR RELATIONS ACT, I DISAGREE WITH MY COLLEAGUES IN THAT PORTION OF THE DECISION OF THE BOARD GRANTING THE MOTION TO AMEND.

2. THE PURPOSE OF SECTION 78 OF THE ACT WAS TO PERMIT AMENDMENTS TO THE STYLE OF CAUSE IN ANY PROCEEDINGS BEFORE THE BOARD WHERE THE PARTY SEEKING THE AMENDMENT HAS FOUND AN ERROR IN NOMENCLATURE OR OTHER BONA FIDE MISTAKE. IN GRANTING THE MOTION TO AMEND THE BOARD IS THEN ALLOWING SECTION 78 OF THE ACT TO BE USED SO AS TO PERMIT ONE ENTITY TO BE SUBSTITUTED FOR ANOTHER, AND THIS IN MY OPINION IS IMPROPER. SECTION 78 WAS NOT INTENDED TO BE USED AS AN "ALTERNATIVE" REMEDY.

3. IN CONSIDERING SUCH A MOTION, THE BOARD MUST HAVE AS A THRESHOLD CONDITION AN ADMISSION OF THE MISTAKE. IN THE CASE BEFORE THE BOARD, THE ALLEGED MISTAKE INVOLVING EVIDENCE OF MEMBERSHIP WITH WHICH THE APPLICANT WAS CONCERNED, WAS DISPELLED WHEN THE BOARD EXPLAINED TO THE APPLICANT THE BOARD'S PRACTICE WHEREBY IT TREATS MEMBERSHIP IN THE INTERNATIONAL AS MEMBERSHIP IN A LOCAL UNION OF THE INTERNATIONAL. THIS WAS DONE AT THE ONSET OF THE FIRST HEARING, AND THE APPLICANT PROCEEDED TO ADDUCE WHAT EVIDENCE IT HAD AVAILABLE AT THE TIME AS TO ITS STATUS.

4. IF THE BOARD PERMITS SECTION 78 OF THE ACT TO BE USED AS AN "ALTERNATIVE" ARGUMENT, THE WHOLE PROCESS OF MEETING THE BOARD'S REQUIREMENTS AS TO EVIDENCE OF STATUS BECOMES A SHAM. THESE REQUIREMENTS ARE NOT ONEROUS AND AN APPLICANT MUST BE PREPARED TO ADDUCE EVIDENCE TO SHOW THAT IT IS INDEED A VIABLE ENTITY WHICH CAN BE CONSIDERED BY THE BOARD TO BE A TRADE UNION WITH OFFICERS AND SPOKESMEN PROPERLY AUTHORIZED TO NEGOTIATE, AND EXECUTE A COLLECTIVE AGREEMENT ON BEHALF OF THE EMPLOYEES IT HAS SOUGHT TO REPRESENT. CARELESSNESS IN THESE PROCEEDINGS MUST BE AT THE PERIL OF THE APPLICANT.

5. HAVING FOUND THAT THE APPLICANT WAS NOT A TRADE UNION WITHIN THE MEANING OF THE ACT, I WOULD HAVE DENIED, WHAT MUST BE TREATED AS AN "ALTERNATIVE" PLEADING. THE REQUEST TO AMEND THE NAME OF ONE ENTITY BY SUBSTITUTING THE NAME OF ANOTHER ENTITY IS IMPROPER AND I WOULD HAVE ACCORDINGLY DISMISSED THE APPLICATION.

11182-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. JOHNSON MATTHEW & MALLORY LIMITED (RESPONDENT) AND INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: J. SULLIVAN FOR THE APPLICANT, P. L. BARKER AND P. H. BRYSON FOR THE RESPONDENT, NO ONE FOR THE INTERVENER.

DECISION OF THE BOARD: (JANUARY 31, 1966).

1. FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER, THE BOARD DIRECTED THE REGISTRAR TO LIST THIS MATTER FOR HEARING ON ALL OUTSTANDING ISSUES INCLUDING THE DESCRIPTION OF THE BARGAINING UNIT AND THE TIMELINESS OF THIS APPLICATION.

2. THE INTERVENER, BY LETTER DATED JANUARY 7TH, 1966, WITHDREW ITS OBJECTION CONCERNING THE TIMELINESS OF THIS APPLICATION.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

4. THE BOARD DETERMINES THAT ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANTS IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. IN DETERMINING THE ABOVE BARGAINING UNIT TO BE APPROPRIATE, THE BOARD HAS TAKEN THE FOLLOWING FACTS INTO CONSIDERATION. THE INTERVENER AND THE RESPONDENT WERE PARTIES TO A COLLECTIVE AGREEMENT COVERING ALL ENGINEERS. ARTICLE 1 OF THIS COLLECTIVE AGREEMENT READS IN PART AS FOLLOWS:

"THE UNION AGREES TO CO-OPERATE WITH THE EMPLOYER
IN THE FURNISHING OF ANY ENGINEER, FIREMAN OR
HELPER AT ANY TIME REQUIRED BY THE EMPLOYER;"

IT IS THEREFORE APPARENT THAT IT WAS THE INTENTION OF THE PARTIES THAT PERSONS PRIMARILY ENGAGED AS HELPERS IN THE RESPONDENT'S BOILER ROOM WERE COVERED BY THE TERMS OF THE COLLECTIVE AGREEMENT. WHILE THE RESPONDENT HAS NEVER EMPLOYED SUCH A PERSON IT IS THE BOARD'S USUAL PRACTICE WHEN CERTIFYING A UNION FOR A CRAFT UNIT OF STATIONARY ENGINEERS TO CERTIFY IN THE TERMS OF THE USUAL CRAFT BARGAINING UNIT REPRESENTED BY SUCH UNIONS. THE BARGAINING UNIT DESCRIBED ABOVE IS IN ACCORDANCE WITH SUCH PRACTICE.

6. IN ADDITION, WHILE THE RESPONDENT OPERATES OUT OF MORE THAN ONE LOCATION IN METROPOLITAN TORONTO THE RESPONDENT EMPLOYS STATIONARY ENGINEERS AT ONLY ONE OF THESE LOCATIONS. AGAIN IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE THE GEOGRAPHICAL DESCRIPTION OF THE BARGAINING UNIT IS NOT CONFINED TO A STREET ADDRESS BUT COVERS ALL EMPLOYEES DESCRIBED IN THE BARGAINING UNIT IN THE AREA WITHIN THE MUNICIPALITY OF METROPOLITAN TORONTO.

11191-65-R: THE FIRECO EMPLOYEES' ASSOCIATION (APPLICANT) V. FIRECO SALES LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: EDWIN T. NOBBS FOR THE APPLICANT, AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE: (FEBRUARY 14, 1966).

1. HAVING REGARD TO ALL THE EVIDENCE HEREIN, THERE IS NOTHING WHICH WOULD CAUSE THE BOARD TO INFER THAT MANAGEMENT WAS IN ANY WAY INSTRUMENTAL IN THE

FORMATION OF THE APPLICANT OR THAT EMPLOYEES WERE IN ANY WAY INFLUENCED BY MANAGEMENT.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER G. RUSSELL HARVEY: (FEBRUARY 14, 1966).

I DISSENT. FOR THE FOLLOWING REASONS I WOULD NOT GRANT STATUS TO THE APPLICANT EMPLOYEES' ASSOCIATION.

AN EMPLOYEE SOUGHT, AND WAS GRANTED PERMISSION BY MANAGEMENT, TO PASS OUT CIRCULARS AND TO HOLD A MEETING OF EMPLOYEES ON COMPANY PREMISES. THE ASSOCIATION REPRESENTATIVE TESTIFIED THERE WAS NO DISCUSSION BY HIM WITH MANAGEMENT OF THE PURPOSES OF THE CIRCULARS OR OF THE MEETING. THE RESPONDENT WAS NOT REPRESENTED AT THE HEARING.

IN VIEW OF THE IMMEDIATE PRECEDING COLLECTIVE BARGAINING EXPERIENCES, AND THE UNIVERSAL CARE EXERCISED BY MANAGEMENT IN GRANTING EMPLOYEES USE OF COMPANY PREMISES AND PERMISSION FOR CIRCULARIZING EMPLOYEES IT IS NOT WITHIN THE AREA OF CREDIBILITY THAT THE RESPONDENT WAS NOT IN SOME WAY AWARE OF THE PURPOSE OF THE REQUEST. IN ANY EVENT, THE EMPLOYEES HAD THE BENEFIT OF EMPLOYER ASSISTANCE.

I WOULD GRANT UNION STATUS FOR THE PURPOSE OF THIS ACT TO A GROUP OF EMPLOYEES WHO AT A MEETING HELD ON COMPANY PREMISES ONLY AGREED TO THE TERMS OF A CONSTITUTION, SELECTED TWO OFFICERS, BUT DID NO CONFIRMING ACT PRIOR, OR SUBSEQUENT, TO THE MEMBERSHIP SIGN-UP WHICH OCCURRED TWO MONTHS LATER.

I CANNOT EQUATE THE FAILURE TO SIGN MEMBERSHIP AT THE ORIGINATING MEETING TO ENABLE, OR CONFIRM, THE CONSTITUTIONAL ELECTION OF OFFICERS, AND OTHER ACTS, UNDER AN APPROVED CONSTITUTION BY ITS MEMBERSHIP WITH THE REASONABLE FORMALITY NORMALLY EXPECTED IN THE BOARD'S STATUS REQUIREMENTS.

11280-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL UNION # 721 (APPLICANT) v. CHUBB-MOSLER AND TAYLOR SAFES LTD. (RESPONDENT) AND LOCAL 678 INTERNATIONAL CHEMICAL WORKERS UNION (INTERVENER).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: AUBREY E. GOLDEN AND T. MICHAEL FOR THE APPLICANT; A. A. WHITE AND R. CASTLE FOR THE RESPONDENT; AND D. MACDONALD FOR THE INTERVENER.

DECISION OF THE BOARD: (JANUARY 27, 1966).

1. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "CHUBB-MOSLER AND TAYLOR SAFES LTD."

2. AT THE HEARING IN THIS MATTER THE APPLICANT APPLIED TO EXTEND THE TERMINAL DATE FOR THE PURPOSE OF PERMITTING THE RESPONDENT TO FILE FURTHER LISTS OF EMPLOYEES AND ALSO FOR THE PURPOSE OF PERMITTING THE APPLICANT TO FILE FURTHER EVIDENCE OF MEMBERSHIP. IT IS APPARENT THAT THE APPLICANT DOES NOT HAVE SUCH EVIDENCE OF MEMBERSHIP AT THE PRESENT TIME AND THE PURPOSE FOR EXTENDING THE TERMINAL DATE WOULD BE TO PERMIT IT TO GO OUT AND ORGANIZE OTHER EMPLOYEES OF THE RESPONDENT. THE BOARD HAS BEEN VERY RIGID IN ITS APPLICATION OF SECTION 50 OF ITS RULES OF PROCEDURE DEALING WITH THE TIME WHEN EVIDENCE AS TO REPRESENTATION IN A TRADE UNION MUST BE FILED IN AN APPLICATION FOR CERTIFICATION AND THE BOARD CAN SEE NO JUSTIFICATION IN THE CIRCUMSTANCES OF THE PRESENT CASE FOR EXTENDING THE TERMINAL DATE TO PERMIT THE FILING OF SUCH EVIDENCE. SHOULD IT BECOME NECESSARY FOR THE RESPONDENT TO FILE A FURTHER LIST OF EMPLOYEES AND SPECIMEN SIGNATURES, THIS IS A MATTER THAT CAN BE DEALT WITH AT A LATER STAGE IN THE PROCEEDINGS. THE MOTION BY THE APPLICANT TO EXTEND THE TERMINAL DATE IS ACCORDINGLY DENIED.

3. WE HAVE CONSIDERED THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE SCOPE OF THE INQUIRY OF THE EXAMINER. IN ALL THE CIRCUMSTANCES OF THIS CASE WE HAVE DECIDED THAT THE EXAMINER'S INQUIRY SHOULD EXTEND TO THE EMPLOYEES OF THE RESPONDENT AT ITS BRAMPTON PLANT. IN COMING TO THIS CONCLUSION THE BOARD MUST NOT BE TAKEN AS HAVING DECIDED IN ANY WAY THAT SUCH EMPLOYEES ARE NECESSARILY APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT IN THE PRESENT CASE. THE PURPOSE OF THE EXTENDED INQUIRY WILL BE MERELY TO HAVE ALL THE MATERIAL FACTS BEFORE THE BOARD SO THAT PROPER REPRESENTATIONS MAY BE MADE TO THE BOARD IN CONNECTION WITH THE APPLICATION.

4. MR. A. A. MORROW, EXAMINER, IS APPOINTED TO INQUIRE INTO AND TO REPORT BACK TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND IN PARTICULAR, BUT WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, THE DUTIES AND RESPONSIBILITIES OF THE EMPLOYEES AT TORONTO CLASSIFIED BY THE RESPONDENT ON ITS LIST FILED WITH THE BOARD AS "SERVICEMEN". IN THE COURSE OF HIS INQUIRY, THE EXAMINER IS DIRECTED TO EXAMINE EMPLOYEES OF THE RESPONDENT, IF ANY, WHO IT IS CLAIMED FALL INTO THE CATEGORY OF "IRONWORKERS", AT ITS BRAMPTON PLANT.

11283-65-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)
(APPLICANT) v. PRESLAND IRON & STEEL LTD. (RESPONDENT) AND GROUP OF EMPLOYEES
(OBJECTORS).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN
AND D. McDERMOTT.

APPEARANCES AT THE HEARING: R. RUSSELL AND DOUG. TYNER FOR THE APPLICANT,
JAMES CLELAND FOR THE RESPONDENT, AND THOMAS C. DOYLE FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (FEBRUARY 8, 1966).

1. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS
APPLICATION IS AMENDED TO READ: "PRESLAND IRON & STEEL LTD."

2. THIS IS AN APPLICATION FOR CERTIFICATION.

3. A PETITION IN OPPOSITION TO THE APPLICATION WAS FILED ON BEHALF OF NINE
EMPLOYEES OF THE RESPONDENT.

4. THE NINE SIGNATURES APPEAR ON THE SECOND OF TWO SHEETS OF PAPER WHICH
COMPRISE THE PETITION. THE FIRST OR TOPMOST SHEET CARRIES THE STATEMENT OF
DESIRE OR PETITION AND IS SIGNED BY TOM DOYLE, THE REPRESENTATIVE OF THE
EMPLOYEES. THIS SIGNATURE IS WITNESSED BY ANOTHER EMPLOYEE OF THE RESPONDENT.
THE EVIDENCE IS THAT THE SIGNATURES WERE ATTACHED TO THE SECOND SHEET BEFORE
THE FIRST SHEET HAD BEEN WRITTEN AND, FURTHERMORE, THAT THE FIRST SHEET WAS
COMPOSED AND WRITTEN OUT BY THE GENERAL MANAGER OF THE RESPONDENT AND THEN
ATTACHED TO THE SHEET BEARING THE SIGNATURES.

5. IN VIEW OF THE ABOVE CIRCUMSTANCES THE BOARD IS NOT PREPARED TO HOLD
THAT THE PETITION WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT
SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A
REPRESENTATION VOTE IN THIS MATTER.

6. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE
MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

7. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT
KINGSTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE
STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR
COLLECTIVE BARGAINING.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT
MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAIN-
ING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT
AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE
BOARD'S RULES OF PROCEDURE.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11287-65-R: GENERAL TRUCK DRIVERS UNION, LOCAL 938, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. POWELL TRANSPORT (ONTARIO) LIMITED (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W. W. TILLER FOR THE APPLICANT, WILLIAM S. COOK AND W. J. POWELL FOR THE RESPONDENT, AND J. BRUCE GARDNER AND FRED HENDERSON FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (FEBRUARY 11, 1966).

1. THIS IS AN APPLICATION FOR CERTIFICATION. IN OPPOSITION TO THE APPLICATION THERE WERE TWELVE INDIVIDUAL PETITIONS FILED WITH THE BOARD.
2. THE EVIDENCE SHOWS THAT THESE PETITIONS WERE COLLECTED IN AN ENVELOPE KEPT ON THE DESK OF THE OPERATIONS MANAGER OF THE RESPONDENT FOR THAT PURPOSE. THE LATTER GAVE INSTRUCTIONS TO THE BOOKKEEPER THAT HE WAS TO DO ANY WORK REQUESTED BY THE EMPLOYEES IN ORDER TO COMPLETE THE PETITIONS AND FORWARD THEM TO THE BOARD.
3. IN THE LIGHT OF THE ABOVE EVIDENCE OF MANAGEMENT PARTICIPATION, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENTS FILED IN OPPOSITION TO THE APPLICATION WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS MATTER.
4. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.
5. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT WHITBY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11337-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIU:CLC (APPLICANT) v. BELLDARE MILK PRODUCTS LTD. (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: H. BUCHANAN FOR THE APPLICANT, DONALD E. HOUCK AND GEO. POWELL FOR THE RESPONDENT, AND LUKE SCHIPPER FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (FEBRUARY 22, 1966).

1. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "BELLEDAIRE MILK PRODUCTS LTD."
2. THIS IS AN APPLICATION FOR CERTIFICATION IN OPPOSITION TO WHICH THERE WAS FILED A STATEMENT OF DESIRE, OR PETITION, BEARING THE SIGNATURES OF FOUR EMPLOYEES OF THE RESPONDENT. MR. LUKE SCHIPPER GAVE EVIDENCE WITH RESPECT TO THE PETITION.
3. SECTION 11 (3) (B) OF THE BOARD'S RULES OF PROCEDURE AND PARAGRAPH 8 (B) OF FORM 5, THE NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION, BOTH INDICATE THAT EVIDENCE IS REQUIRED AS TO THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED. MR. SCHIPPER WAS ABLE TO GIVE THIS EVIDENCE ONLY WITH RESPECT TO HIS OWN AND ONE OTHER SIGNATURE, NEITHER OF WHICH IS RELEVANT INsofar AS THE EVIDENCE OF MEMBERSHIP IS CONCERNED. IN THESE CIRCUMSTANCES, THE BOARD IS NOT PREPARED TO FIND THAT THE DOCUMENT FILED IN OPPOSITION TO THE APPLICATION WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT.
4. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.
5. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT INGERSOLL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND DAIRY BAR EMPLOYEES, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11347-65-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. B.D.C. LTD. (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: I. J. THOMSON FOR THE APPLICANT, W. K. WINKLER FOR THE RESPONDENT, A. C. FINKELSTEIN FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD:

1. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "B.D.C. LTD."
2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF METROPOLITAN TORONTO.
3. THE RESPONDENT, B.D.C. LTD., IS INCORPORATED UNDER THE LAWS OF CANADA WITH HEAD OFFICE IN THE CITY OF TORONTO. THE RESPONDENT IS ENGAGED IN THE BUSINESS OF TRANSPORTING BUSINESS PAPERS AND DOCUMENTS FOR ITS CLIENTS SUCH AS BANKS AND TRUST COMPANIES FROM ONE LOCATION TO ANOTHER THROUGHOUT THE PROVINCE OF ONTARIO AND PARTS OF THE PROVINCE OF QUEBEC, AND ALSO TO DETROIT IN THE STATE OF MICHIGAN. THE RESPONDENT HAS TERMINAL FACILITIES IN WINDSOR, HAMILTON, TORONTO, OTTAWA AND MONTREAL. IT OWNS SOME FORTY VEHICLES WHICH IT USES IN THE CONDUCT OF ITS BUSINESS AND THESE VEHICLES ARE FULLY LICENSED IN BOTH ONTARIO AND QUEBEC FOR OVER THE ROAD TRANSPORT OF MATERIALS UP TO A CERTAIN WEIGHT. THE RESPONDENT OPERATES A PRECISELY COORDINATED RELAY SYSTEM ON A REGULAR WEEKLY SCHEDULE TO TRANSPORT THE BUSINESS PAPERS AND DOCUMENTS OF ITS CLIENTS THROUGHOUT THE PROVINCE OF ONTARIO AND AS FAR AS QUEBEC CITY IN THE PROVINCE OF QUEBEC. MORE SPECIFICALLY, ON A DAILY BASIS, A DRIVER FROM TORONTO AT A SCHEDULED TIME MEETS WITH A DRIVER FROM MONTREAL IN KINGSTON, AT WHICH POINT PAPERS AND DOCUMENTS DESTINED FOR CENTRES IN OPPOSITE DIRECTIONS ARE EXCHANGED AND SUBSEQUENTLY DELIVERED. SIMILAR SCHEDULED LIASONS FOR THE SAME PURPOSE ARE MADE BETWEEN DRIVERS IN OTHER CENTRES OF ONTARIO AND ALSO AT MONTREAL. AS WELL, A DAILY RUN IS OPERATED BY THE RESPONDENT BETWEEN OTTAWA AND HULL AND BETWEEN WINDSOR AND DETROIT.
4. THE RESPONDENT SUBMITS THAT IT IS ENGAGED IN AN UNDERTAKING CONNECTING THE PROVINCES OF ONTARIO AND QUEBEC AND THAT ACCORDINGLY ITS OPERATIONS FALL WITHIN THE JURISDICTION OF THE PARLIAMENT OF CANADA BY VIRTUE OF SECTION 92 (10) (A) AND SECTION 91 (29) OF THE BRITISH NORTH AMERICA ACT. THE RESPONDENT THEREFORE FURTHER SUBMITS THAT THE EMPLOYEES OF THE RESPONDENT ARE SUBJECT TO THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT R.S.C. 1952 C. 152, RATHER THAN THE ONTARIO LABOUR RELATIONS ACT.
5. HAVING CONSIDERED THE NATURE OF THE RESPONDENT'S OPERATIONS AND APPLYING THE PRINCIPLES AND REASONING SET OUT IN A.G. ONTARIO V WINNER (1954) A.C. 541; R. V TORONTO MAGISTRATES, EX PARTE TANK TRUCK TRANSPORT LIMITED (1960) O.R. 497; R. V COOKSVILLE MAGISTRATES, EX PARTE LIQUID CARGO LINES LTD. (1964) 1 O.R. 84, THE BOARD FINDS THAT THE LABOUR RELATIONS BETWEEN THE RESPONDENT AND ITS EMPLOYEES FALL WITHIN THE EXCLUSIVE JURISDICTION OF THE PARLIAMENT OF CANADA. THE BOARD, ACCORDINGLY, FURTHER FINDS THAT IT IS WITHOUT JURISDICTION TO ENTERTAIN THE INSTANT APPLICATION.
6. THE APPLICATION, THEREFORE, IS DISMISSED.

11353-65-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION
No. 91 (APPLICANT) v. KEYSTONE CONTRACTORS LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W. W. TILLER FOR THE APPLICANT, W. K. WINKLER
FOR THE RESPONDENT.

DECISION OF THE BOARD: (FEBRUARY 23, 1966.)

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE
MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION
WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

3. THE BOARD FURTHER FINDS THAT ALL TRUCK DRIVERS IN THE EMPLOY OF THE
RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT EXCLUDING
MARLBOROUGH TOWNSHIP, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF
FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR
COLLECTIVE BARGAINING.

4. THE EVIDENCE IS THAT ON JANUARY 30TH, 1966 THERE WAS A HEAVY SNOWSTORM
IN OTTAWA, THE JOB SITE OF THE WORK BEING PERFORMED BY THE RESPONDENT, AS A
RESULT OF WHICH NONE OF THE EMPLOYEES OF THE RESPONDENT WITH WHOM WE ARE HERE
CONCERNED WERE ABLE TO REPORT FOR WORK ON JANUARY 31ST, 1966, THE DATE OF THE
MAKING OF THE INSTANT APPLICATION. ALL THE EMPLOYEES CONCERNED WERE AT WORK
ON JANUARY 28TH, THE LAST WORKING DAY PRIOR TO THE DATE OF THE MAKING OF THE
APPLICATION AND THEY ALL WERE AT WORK ON THE FOLLOWING DAY, FEBRUARY 1ST, 1966.

5. THE ESTABLISHED POLICY OF THE BOARD IN APPLICATIONS FOR CERTIFICATION
UNDER THE CONSTRUCTION INDUSTRY SECTIONS OF THE ACT IS TO INCLUDE IN THE
BARGAINING UNIT FOR THE PURPOSE OF THE COUNT ONLY THOSE EMPLOYEES WHO ARE
EMPLOYED BY THEIR EMPLOYER ON THE ACTUAL DATE OF THE MAKING OF THE APPLICATION
(SEE WELCON LIMITED, O.L.R.B. MONTHLY REPORT, MARCH 1965, P. 627; BERTRAND &
FRERE CONSTRUCTION CO. LIMITED, O.L.R.B. MONTHLY REPORT, JULY 1965, P. 292).
THE APPLICANT SUBMITS, HOWEVER, THAT THE INABILITY OF THE EMPLOYEES IN
QUESTION TO REPORT FOR WORK ON THE DATE OF THE MAKING OF THE APPLICATION WAS
CLEARLY "AN ACT OF GOD" AND BEYOND THEIR CONTROL. THE APPLICANT THEREFORE
REQUESTS THAT THE BOARD IN THE INSTANT CASE DEPART FROM ITS USUAL POLICY AND
TAKE INTO ACCOUNT THE FACT THAT THE EMPLOYEES CONCERNED WERE AT WORK ON BOTH
DAYS IMMEDIATELY PRIOR AND SUBSEQUENT TO THE DATE OF THE MAKING OF THE
APPLICATION.

6. THE BOARD IS OF THE OPINION THAT, WHILE THERE MAY BE MERIT IN THE
APPLICANT'S SUBMISSION IN THE PARTICULAR CIRCUMSTANCES OF THE INSTANT CASE,
TO ACCEDE TO THE APPLICANT'S REQUEST MIGHT WELL LEAD TO UNCERTAINTY AND
CONTROVERSY REGARDING THE BOARD'S POLICY IN SUBSEQUENT APPLICATIONS.

ACCORDINGLY, THE BOARD IS NOT PREPARED TO MAKE AN EXCEPTION FROM ITS ESTABLISHED POLICY IN THE INSTANT CASE. WE WOULD ADD THAT, IN OUR VIEW, THE BOARD'S POLICY IS BASICALLY EQUITABLE TO ALL PARTIES AND AS WELL LENDS ITSELF TO THE EXPEDITIOUS DISPOSITION OF CERTIFICATION APPLICATIONS WHICH IS A PRIMARY CONSIDERATION IN THE CONSTRUCTION INDUSTRY. FURTHER, THERE IS NOTHING TO PREVENT THE APPLICANT FROM FILING AN APPLICATION AS OF A DATE ON WHICH THE EMPLOYEES CONCERNED ARE IN THE EMPLOY OF THE RESPONDENT.

7. SINCE NONE OF THE EMPLOYEES CONCERNED IN THIS APPLICATION WERE IN THE EMPLOY OF THE RESPONDENT ON THE DATE OF THE MAKING OF THE APPLICATION, THE APPLICATION IS DISMISSED.

11357-65-R: LOCAL UNION # 1940, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) v. NORTHERN FLOORING (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (FEBRUARY 8, 1966).

1. THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT IN THIS CASE CONSISTS OF THREE CERTIFICATES OF MEMBERSHIP INDICATING THAT THE PERSONS CONCERNED ARE MEMBERS OF A LOCAL OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA OTHER THAN THE APPLICANT LOCAL UNION # 1940. IN THE O. J. GAFFNEY LIMITED CASE, BOARD FILE NO. 11052-65-R, THE BOARD POINTED OUT THAT MEMBERSHIP EVIDENCE IN A LOCAL TRADE UNION OTHER THAN THE APPLICANT LOCAL WAS NOT SATISFACTORY EVIDENCE OF MEMBERSHIP AND WOULD NOT BE ACCEPTED BY THE BOARD. IN A PREVIOUS DECISION INVOLVING LOCAL UNION # 1940, THE PRESENT APPLICANT, (SEE BOHN TILE COMPANY LIMITED, BOARD FILE NO. 11323-65-R) THE BOARD FOUND THAT SUCH EVIDENCE WAS UNSATISFACTORY WITH A RESULT THAT A REPRESENTATION VOTE WAS DIRECTED. IN THE PRESENT CASE NONE OF THE CERTIFICATES FILED IS SATISFACTORY EVIDENCE OF MEMBERSHIP IN THE APPLICANT.

2. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE APPLICATION IS DISMISSED.

11362-65-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. THE KELVIN-THOMPSON COMPANY LIMITED (RESPONDENT) AND THE UNITED STEELWORKERS OF AMERICA (INTERVENER).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: E. C. WITTHAMES FOR THE APPLICANT, R. D. PERKINS AND E. C. BOSTON FOR THE RESPONDENT, D. M. STOREY FOR THE INTERVENER.

DECISION OF THE BOARD: (FEBRUARY 28, 1966).

1. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "THE KELVIN-THOMPSON COMPANY LIMITED".

2. THE BOARD FINDS THAT THE INTERVENER IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

3. THE BOARD FINDS THAT THE INTERVENER IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

4. THE RESPONDENT IS A SUBSIDIARY COMPANY OF ALLIED FARM EQUIPMENT INCORPORATED, AN AMERICAN COMPANY WITH HEAD OFFICE IN CHICAGO. FLEURY-BISSEL IMPLEMENTS LIMITED LOCATED IN ELORA ALSO IS A SUBSIDIARY OF ALLIED FARM EQUIPMENT INCORPORATED. SOME TIME IN THE LATTER PART OF 1965 THE KELVIN-THOMPSON COMPANY LIMITED ACQUIRED THE ASSETS OF FLEURY-BISSEL IMPLEMENTS LIMITED. SUBSEQUENTLY, THE FORMER COMPANY SHUTDOWN ITS PLANT AT AJAX AND THE LATTER COMPANY IS IN THE SAME PROCESS AT ELORA. THE MANUFACTURING OPERATIONS PREVIOUSLY CARRIED ON BY BOTH COMPANIES HAVE BEEN RELOCATED AT ST. MARYS AND THE PLANT COMMENCED OPERATIONS EARLY IN JANUARY 1966 IN THE NAME OF THE KELVIN-THOMPSON COMPANY LIMITED.

5. BY CERTIFICATE OF THE BOARD DATED OCTOBER 14TH, 1964, THE INTERVENER WAS CERTIFIED FOR ALL EMPLOYEES OF THE RESPONDENT AT AJAX (WITH CERTAIN EXCEPTIONS THAT ARE NOT HERE MATERIAL). ON MARCH 5TH, 1965 THE RESPONDENT AND THE INTERVENER ENTERED INTO A COLLECTIVE AGREEMENT EFFECTIVE FROM FEBRUARY 11TH, 1965 TO FEBRUARY 11TH, 1968. THE "UNION RECOGNITION" CLAUSE, HOWEVER, DID NOT PLACE ANY LIMITATION ON THE GEOGRAPHIC AREA COVERED BY THE AGREEMENT. IN OTHER WORDS THE APPLICANT AND THE INTERVENER ENTERED INTO A PROVINCE-WIDE AGREEMENT.

6. WHEN THE RESPONDENT AND THE INTERVENER ENTERED INTO THE COLLECTIVE AGREEMENT, THE RESPONDENT HAD ONLY THE ONE PLANT LOCATED AT AJAX. ACCORDINGLY, HAVING REGARD TO THE BOARD'S CERTIFICATION OF THE INTERVENER AS BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT AT AJAX, IT IS CLEAR THAT AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO BY THE PARTIES THE INTERVENER WAS ENTITLED TO REPRESENT THE EMPLOYEES OF THE RESPONDENT COVERED BY THE "UNION RECOGNITION" CLAUSE OF THE AGREEMENT. THE BOARD THEREFORE FINDS THAT SECTION 45A OF THE ACT HAS NO APPLICATION IN THE CIRCUMSTANCES OF THE INSTANT CASE AND THAT THERE IS A VALID AND BINDING COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE RESPONDENT AND THE INTERVENER.

7. THE BOARD FURTHER FINDS THAT HAVING REGARD TO THE SCOPE OF THE "UNION RECOGNITION" CLAUSE IN THE COLLECTIVE AGREEMENT, THE INTERVENER HOLDS THE BARGAINING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT AT ST. MARYS. THE APPLICATION OF THE APPLICANT, THEREFORE, IS UNTIMELY.

8. THE APPLICATION ACCORDINGLY IS DISMISSED.

11420-65-R: OPERATIVE PLASTERER'S AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 159 (APPLICANT) v. CULP BROS. LTD. AND BRICKLAYERS', MASONS' AND PLASTERERS' INTERNATIONAL UNION, LOCAL 12 (INTERVENER).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (FEBRUARY 24, 1966).

1. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "CULP BROS. LTD."
2. THE NAME OF THE INTERVENER APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "BRICKLAYERS', MASONS' AND PLASTERERS' INTERNATIONAL UNION, LOCAL 12".
3. THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT CONSISTED OF ONE STATEMENT OF MEMBERSHIP AND FOUR RECEIPTS. THE RECEIPTS ARE COUNTERSIGNED BY THE PAYOR. THERE ARE NO APPLICATION CARDS AND THERE IS NO OTHER EVIDENCE OF MEMBERSHIP OR DESIRE FOR MEMBERSHIP FILED BY THE APPLICANT FOR THE FOUR PERSONS WHO COUNTER SIGNED THE RECEIPTS. THE EVIDENCE OF MEMBERSHIP RESPECTING THESE FOUR PERSONS DOES NOT MEET THE BOARD'S STANDARDS IN THESE MATTERS. SEE MATTHEWS CONSTRUCTION COMPANY LIMITED, C.C.H. TRANSFER BINDER, (1955-59), #16,017; C.L.S. 76-479.

WHILE THE STATEMENT OF MEMBERSHIP MAY CONSTITUTE SATISFACTORY EVIDENCE OF MEMBERSHIP, THAT EVIDENCE RELATES ONLY TO ONE PERSON. THE APPLICANT STATES THAT THERE ARE FIVE PERSONS IN THE BARGAINING UNIT AND THE RESPONDENT STATES THAT THERE ARE SEVEN PERSONS IN THE BARGAINING UNIT. IT IS OBVIOUS THAT THE SATISFACTORY EVIDENCE OF MEMBERSHIP IS NOT SUFFICIENT TO ENABLE THE BOARD EVEN TO ORDER A VOTE.

4. IN THESE CIRCUMSTANCES, THEREFORE, THE APPLICATION MUST BE DISMISSED.

INDEXED ENDORSEMENT - TERMINATION

11361-65-R: ANNE RESE, JOHN FARRUGIA AND GORDON PERRY (APPLICANTS) v. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT).

(RE: BRUNSWICK OF CANADA LTD.)

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: B. W. BINNING, A. RESE, J. FARRUGIA AND G. PERRY FOR THE APPLICANTS, NO ONE FOR THE RESPONDENT.

DECISION OF J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE:

1. THIS IS AN APPLICATION UNDER SECTION 45 OF THE ACT FOR A DECLARATION TERMINATING BARGAINING RIGHTS.
2. THE RESPONDENT IS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF BRUNSWICK OF CANADA LTD. (HEREINAFTER REFERRED TO AS THE COMPANY). THE COMPANY AND THE UNION WERE BOUND BY A COLLECTIVE AGREEMENT EFFECTIVE UNTIL DECEMBER 31ST, 1965 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. THE COLLECTIVE

AGREEMENT PROVIDES THAT SHOULD EITHER PARTY DESIRE TO MODIFY, AMEND OR TERMINATE THE AGREEMENT NOTICE OF SUCH DESIRE IS TO BE GIVEN TO THE OTHER PARTY NOT MORE THAN 120 DAYS NOR LESS THAN 90 DAYS PRIOR TO ANY ANNIVERSARY DATE OF THE AGREEMENT. THE RESPONDENT UNION BY REGISTERED LETTER DATED SEPTEMBER 23RD, 1965, WHICH IS WITHIN THE SPECIFIED PERIOD, GAVE NOTICE TO THE COMPANY OF ITS DESIRE TO REOPEN THE COLLECTIVE AGREEMENT FOR THE PURPOSE OF MAKING AMENDMENTS THERETO. IN ITS LETTER OF SEPTEMBER 23RD THE RESPONDENT FURTHER STATED THAT IT WOULD FORWARD ITS PROPOSED AMENDMENTS AT AN EARLY DATE AT WHICH TIME ARRANGEMENTS COULD BE MADE TO COMMENCE NEGOTIATIONS.

3. THE EVIDENCE BEFORE THE BOARD IS THAT SINCE RECEIPT BY THE COMPANY OF THE RESPONDENT'S LETTER OF SEPTEMBER 23RD, 1965 THE RESPONDENT HAS NEITHER VERBALLY NOR IN WRITING IN ANY WAY COMMUNICATED WITH THE COMPANY. WE NOTE FURTHER THAT THE RESPONDENT DID NOT FILE A REPLY TO THE INSTANT APPLICATION NOR DID ANYONE APPEAR AT THE BOARD HEARING ON FEBRUARY 16TH, 1966 ON BEHALF OF THE RESPONDENT TO OFFER ANY EXPLANATION FOR ITS FAILURE TO COMMENCE NEGOTIATIONS WITH THE COMPANY DESPITE THE FACT THAT A PERIOD OF NEARLY FIVE MONTHS HAS ELAPSED SINCE THE GIVING OF NOTICE.

4. HAVING REGARD TO ALL THESE CIRCUMSTANCES, THE BOARD DECLARES THAT THE RESPONDENT TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES OF THE COMPANY FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT.

DECISION OF BOARD MEMBER E. BOYER: (FEBRUARY 21, 1966).

I DISSENT. IN THE CIRCUMSTANCES, I WOULD HAVE DIRECTED THE TAKING OF A REPRESENTATION VOTE OF THE EMPLOYEES IN THE BARGAINING UNIT.

INDEXED ENDORSEMENT - STRIKE UNLAWFUL

11354-65-U: MEN'S CLOTHING MANUFACTURERS ASSOCIATION OF ONTARIO -AND- FIRTH BROS. LIMITED (APPLICANTS) V. JOSEPH WILSON O'CONNOR, WILLIAM G. TURNER, JAMES BLACK, DANIEL DEMERS, LLOYD HARRINGTON, PIETER B. VAN DER WEL, FRANK MANCINI, ROBERT DRAKER, ALFRED ARSENAULT, BRUNO MOLINARO, GARY WADE AND FRANK A. AQUINO (RESPONDENTS).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDERMOTT.

APPEARANCES AT THE HEARING: WILLIAM S. COOK, JAMES C. FIRTH, A. BLAKE AND T. ALPIN FOR THE APPLICANTS, AND FRANK AQUINO, JIM BLACK, GARY WADE, ALFRED ARSENAULT, R. W. DRAKER, LLOYD HARRINGTON, FRANK MANCINI, WM. TURNER, JOSEPH W. O'CONNOR, DANIEL DEMERS, BRUNO MOLINARO AND PIETER B. VAN DER WEL FOR THE RESPONDENTS.

DECISION OF THE BOARD: (FEBRUARY 10, 1966).

1. THIS IS AN APPLICATION FOR A DECLARATION THAT THE NAMED RESPONDENTS ENGAGED IN AN UNLAWFUL STRIKE CONTRARY TO SECTION 54 OF THE LABOUR RELATIONS ACT.

2. THE NAMED RESPONDENTS ARE MEMBERS OF A BARGAINING UNIT OF EMPLOYEES OF FIRTH BROS. LIMITED REPRESENTED BY THE AMALGAMATED CLOTHING WORKERS OF AMERICA. THERE IS A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE APPLICANTS AND THE AMALGAMATED CLOTHING WORKERS, THE TERM OF WHICH EXTENDS FROM THE 1ST DAY OF DECEMBER, 1964, TO THE 30TH DAY OF NOVEMBER, 1967.

3. COMMENCING ON JANUARY 28TH, 1966, EACH OF THE RESPONDENTS, WHO ARE CLASSIFIED AS CUTTERS, ENGAGED IN A COURSE OF CONDUCT WHICH RESULTED IN THEIR BEING ABSENT FROM WORK ON ALTERNATIVE DAYS. THUS, OUT OF A TOTAL COMPLEMENT OF 15 CUTTERS, 5 CUTTERS FAILED TO APPEAR ON FEBRUARY 1ST; ON FEBRUARY 2ND THESE 5 REPORTED FOR WORK, BUT 5 OTHERS WERE ABSENT; ON FEBRUARY 3RD 5 CUTTERS WERE ABSENT AND ON FEBRUARY 6TH 6 CUTTERS WERE ABSENT. A CHART (EXHIBIT 2) DERIVED FROM THE TIME SHEETS OF THE RESPONDENTS, CLEARLY INDICATES A PATTERN OF ALTERNATE DAYS OF WORK AND DAYS OF ABSENCE FOR EACH OF THE RESPONDENTS. THIS PROCEDURE WAS IN OPERATION AT THE TIME OF THE APPLICATION AND INDEED, AS INDICATED ABOVE, UP TO THE 6TH OF FEBRUARY.

TWO OF THE RESPONDENTS OFFERED EVIDENCE. MR. DRAKER STATED THAT HE WAS NOT ON STRIKE AND THAT HIS ABSENCES WERE DUE TO ILLNESS. HE WAS UNABLE TO STATE THE NATURE OF THE ILLNESS, BUT WAS HOPEFUL OF FINDING IT OUT LATER IN THE WEEK WHEN HE VISITED HIS DOCTOR. HE SAID HE HAD HAD NO CONVERSATION WITH THE OTHER RESPONDENTS WITH RESPECT TO THE ABSENCES.

FRANK MANCINI ALSO TESTIFIED THAT HIS ABSENCES WERE DUE TO ILLNESS. HE HAD HAD NO DISCUSSION ABOUT ABSENTEEISM WITH ANY OF THE OTHER EMPLOYEES. IT IS DIFFICULT TO ACCEPT THIS EVIDENCE WHICH ATTEMPTS TO ESTABLISH AN ALTERNATING TYPE OF INDISPOSITION OCCURRING AT A TIME WHEN FELLOW EMPLOYEES WERE ABSENTING THEMSELVES FROM WORK ACCORDING TO A SIMILAR PATTERN.

THERE IS AN UNAVOIDABLE INFERENCE OF CONCERTED ACTION IN THE COURSE OF CONDUCT FOLLOWED BY THE RESPONDENTS AND IT IS READILY APPARENT THAT SUCH A PATTERN OF BEHAVIOUR, WHICH DID IN FACT LIMIT THE OUTPUT OF THE APPLICANT, CONSTITUTES A STRIKE WITHIN THE MEANING OF SECTION 1 (1) (i) OF THE LABOUR RELATIONS ACT. THE BOARD DECLARES THAT THE STRIKE ENGAGED IN BY THE NAMED RESPONDENTS IS CONTRARY TO SECTION 54 (1) OF THE LABOUR RELATIONS ACT AND IS THEREFORE UNLAWFUL.

INDEXED ENDORSEMENT - PROSECUTION

11245-65-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. CANADIAN STANDARDS ASSOCIATION TESTING LABORATORIES (RESPONDENT).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: LORNE INGLE, WM. ACTON AND HOWARD INGRAM FOR THE APPLICANT, R. A. SMITH, Q.C., J. D. BARNES AND J. E. HOUCK FOR THE RESPONDENT.

DECISION OF THE BOARD: (FEBRUARY 7, 1966).

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE PROSECUTION.
2. THE NATURE OF THE ALLEGED OFFENCE IS SHOWN AS: "VIOLATION OF SECTION 12 AND 59 OF THE LABOUR RELATIONS ACT."
3. THE MATERIAL FACTS RELIED UPON ARE AS FOLLOWS:

THAT ON JUNE 22, 1965, THE APPLICANT WAS CERTIFIED AS THE BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT AND SUBSEQUENT TO THAT TIME COMMENCED TO BARGAIN COLLECTIVELY PURSUANT TO SECTION 12 OF THE LABOUR RELATIONS ACT. ON SEPTEMBER 30, 1965, THE GENERAL MANAGER OF THE RESPONDENT, MR. G. B. TEBO, FORWARDED A CIRCULAR LETTER TO ALL C.S.A. EMPLOYEES INDICATING THAT THE EMPLOYEES' PENSION PLAN WOULD BE INTEGRATED WITH THE CANADA PENSION PLAN AND HAS SUBSEQUENTLY REFUSED TO ACKNOWLEDGE THAT THE EMPLOYEES' PENSION PLAN WAS A PROPER SUBJECT FOR COLLECTIVE BARGAINING. ON WEDNESDAY, DECEMBER 15, 1965, BEFORE A CONCILIATION OFFICER, MR. WM. MCGUIRE, THE RESPONDENT REPRESENTATIVE FURTHER INDICATED THAT THE EMPLOYEES' PENSION PLAN WAS NOT NEGOTIABLE AND THAT EFFECTIVE JANUARY 1, 1966, IT WOULD BE INTEGRATED WITH THE CANADA PENSION PLAN.

4. THE BOARD PROPOSES TO DEAL FIRST WITH THE ALLEGATIONS WITH RESPECT TO SECTION 12 OF THE ACT.

5. SECTION 12 READS AS FOLLOWS:

THE PARTIES SHALL MEET WITHIN FIFTEEN DAYS FROM THE GIVING OF THE NOTICE OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES AGREE UPON AND THEY SHALL BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT.

6. THE PARTIES AGREED THAT THE APPLICANT TRADE UNION HAD BEEN DULY CERTIFIED, AND THAT NOTICE OF DESIRE TO BARGAIN HAD BEEN GIVEN IN COMPLIANCE WITH SECTION 11 OF THE ACT.
7. THERE WAS MUCH TESTIMONY AND A PLETHORA OF EXHIBITS INDICATING THAT THE PARTIES HAVE BARGAINED CONCERNING A WIDE RANGE OF ITEMS AND HAVE REACHED AGREEMENT ON SOME. THEY HAVE MET ON TWELVE OCCASIONS FROM JULY 28TH, 1965, TO JANUARY 7TH, 1966, INCLUSIVE AND WERE SCHEDULED TO HOLD A FURTHER MEETING ON JANUARY 17TH, 1966.

8. THE EVIDENCE IS THAT THE COMPANY HAS NEVER REFUSED TO MEET WITH THE UNION. IN THE OPINION OF MR. INGRAM, PRESIDENT OF THE LOCAL, BOTH PARTIES HAVE BEEN TRYING TO GET AN AGREEMENT. HE AGREED WITH THE SUGGESTION OF COUNSEL FOR THE RESPONDENT THAT TOUGH BARGAINING HAD TAKEN PLACE AND THAT AGREEMENT HAD BEEN REACHED ON A NUMBER OF ITEMS.

9. THE APPLICANT'S CASE, HOWEVER, IS BASED UPON THE SPECIFIC ALLEGATIONS THAT WITH RESPECT TO THE PENSION PLAN THE RESPONDENT HAS FAILED TO BARGAIN IN GOOD FAITH.

10. THE EVIDENCE RELATING TO THE PENSION ISSUE INDICATES THAT THE INITIAL POSITION TAKEN BY THE COMPANY, AND MAINTAINED FOR A CONSIDERABLE TIME, WAS THAT IT WOULD NOT NEGOTIATE WITH RESPECT TO PENSIONS. LATER IN THE COURSE OF THE BARGAINING, AROUND THE 3RD TO 7TH OF SEPTEMBER, 1965, THE COMPANY GAVE THE UNION A DRAFT OF A PROPOSED COLLECTIVE AGREEMENT (EXHIBIT 4). ATTACHED TO THIS DOCUMENT WAS THE FOLLOWING NOTE "PENSION ETC. ETC." THE SECOND PARAGRAPH SETS OUT THE REASONS FOR WHICH THE COMPANY FEELS THE PENSION PLAN IS NOT NEGOTIABLE. SOME CONSIDERABLE TIME LATER AND SUBSEQUENT TO THE DATE OF THE APPLICATION FOR CONSENT TO PROSECUTE, MR. ACTON, ONTARIO REGIONAL DIRECTOR OF CANADIAN UNION OF PUBLIC EMPLOYEES, WROTE THE FOLLOWING LETTER, DATED JANUARY 13TH, 1966, TO MR. J. D. BARNES, SECRETARY OF C.S.A.

FURTHER TO OUR VERBAL AGREEMENT OF JANUARY 7TH 1966
TO EXCHANGE PROPOSED CLAUSES ON THE SUBJECT OF
PENSION, WE ENCLOSED HERewith OUT PROPOSED ARTICLE
10 PENSION FOR YOUR CONSIDERATION.

11. THE PROPOSED CLAUSE 10 REFERRED TO IN THE LETTER READS AS FOLLOWS:

ARTICLE 10 - PENSIONS

(A) THE PROVISIONS RESPECTING THE PENSION PLAN
AMENDED AS OF APRIL 1ST, 1964, AND AMENDED
196 TO COMPLY WITH THE
ONTARIO PENSION BENEFITS ACT AND AMENDED
196 FOR PURPOSES OF
INTEGRATION WITH THE CANADA PENSION PLAN SHALL
CONTINUE IN EFFECT DURING THE PERIOD OF THIS
COLLECTIVE AGREEMENT.

(B) UPON THE COMMENCEMENT OF THE CANADA PENSION
PLAN THERE SHALL BE A DEDUCTION FROM EMPLOYEES
A TOTAL OF 5% OF SALARY TO INCLUDE 1.8% OF SALARY
ON THE FIRST \$5000. OF ANNUAL EARNINGS LESS THE
FIRST \$600. OF ANNUAL EARNINGS TO A MAXIMUM OF
\$79.20 FOR THE CANADA PENSION PLAN.

(C) UPON THE COMMENCEMENT OF THE CANADA PENSION
PLAN THE COMPANY SHALL CONTRIBUTE 5% OF EMPLOYEES
ANNUAL SALARY TO INCLUDE 1.8% OF SALARY ON THE

FIRST \$5000. OF ANNUAL EARNINGS LESS THE FIRST \$600. OF ANNUAL EARNINGS TO A MAXIMUM OF \$79.20 FOR THE CANADA PENSION PLAN.

(D) THE BALANCE OF DEDUCTIONS FROM EMPLOYEES AND EMPLOYER WILL PROVIDE THE BENEFITS FROM THE CANADIAN STANDARDS ASSOCIATION PENSION PLAN.

(E) THE BENEFITS WILL BE AGREED UPON BETWEEN MANAGEMENT AND THE UNION.

(F) NO ADDITIONAL CHANGES OR AMENDMENTS TO THE AGREED UPON PENSION PLAN WILL BE ENTERED INTO UNLESS AS MUTUALLY AGREED BETWEEN THE PARTIES TO THIS AGREEMENT.

(G) THE AGREED UPON PENSION PLAN (AS DESCRIBED IN (A) ABOVE) SHALL BE ATTACHED AS "APPENDIX A" AND SHALL FORM AN INTEGRAL PART OF THIS COLLECTIVE AGREEMENT.

12. ON THE 14TH OF JANUARY MR. BARNES REPLIED TO MR. ACTON AS FOLLOWS:

THIS IS TO ACKNOWLEDGE RECEIPT OF YOUR LETTER OF JANUARY 13TH, 1966, WHICH WAS HANDED TO ME AT NOON YESTERDAY, REFERABLE TO THE SUBJECT OF PENSION WHICH WAS DISCUSSED AT MEETINGS PRIOR TO JANUARY 7TH AND AT THE MEETING OF JANUARY 7TH TO WHICH YOU REFER IN YOUR LETTER. IN ACCORDANCE WITH OUR DISCUSSION ON JANUARY 7TH, WE HAVE REQUESTED INFORMATION ABOUT THE PENSION PLAN AND WILL PROVIDE YOU WITH THIS AS SOON AS IT HAS BEEN RECEIVED.

YOUR PROPOSED ARTICLE 10 TO THE COLLECTIVE AGREEMENT WILL BE PRESENTED TO OUR NEGOTIATING COMMITTEE AND WE WILL REVIEW THIS MATTER AGAIN WITH YOU AT THE EARLIEST OPPORTUNITY.

13. IT IS TO BE NOTED THAT IN THE LETTER MR. BARNES UNDERTAKES TO REVIEW THE MATTER WITH MR. ACTON AT THE EARLIEST POSSIBLE DATE.

14. THE CORRESPONDENCE INDICATES THAT THE PARTIES HAD HAD SOME DISCUSSION CONCERNING PENSIONS ON JANUARY 7TH, 1966, AND THAT THE LETTERS AND PROPOSED CLAUSE AROSE OUT OF AN AGREEMENT REACHED AT THAT TIME TO, AND THE EMPHASIS IS ADDED, EXCHANGE PROPOSED CLAUSES. BARNES' LETTER OF JANUARY 14TH CONTAINS AN UNDERTAKING TO REVIEW THE MATTER AGAIN, WITH ACTON, AT THE EARLIEST OPPORTUNITY.

15. THE BOARD FINDS THAT THIS CORRESPONDENCE ALONE, LATE IN THE DAY AS IT MAY HAVE BEEN, ANSWERS THE APPLICANT'S CHARGE OF FAILURE ON THE PART OF THE

RESPONDENT TO BARGAIN IN GOOD FAITH WITH RESPECT TO PENSIONS, AND LEAVES NO REASONABLE GROUNDS UPON WHICH TO BASE A PROSECUTION FOR A VIOLATION OF SECTION 12.

16. THE APPLICATION INSOFAR AS IT REFERS TO SECTION 12 IS THEREFORE DISMISSED.

17. AS TO SECTION 59, A REFERENCE TO THE MATERIAL FACTS SET OUT IN THE APPLICATION INDICATES THAT AT THE DATE THE APPLICATION WAS MADE, DECEMBER 28TH, 1965, THE OFFENCE ALLEGED HAD NOT YET OCCURRED AND, AS THE FACT IS, COULD NOT HAVE OCCURRED UNTIL JANUARY 1, 1966. THE GIST OF THE CHARGE IS THAT MR. McQUIRE, A REPRESENTATIVE OF THE RESPONDENT, INDICATED THAT THE EMPLOYEES' PLAN WAS NOT NEGOTIABLE AND THAT, AND THIS IS THE HEART OF THE CHARGE, EFFECTIVE JANUARY 1, 1966, IT WOULD BE INTEGRATED WITH THE CANADA PENSION PLAN. THE CHARGE IS BASED, NOT UPON AN ACT **DONE**, BUT RATHER UPON THE EXPRESSED INTENT OF THE RESPONDENT TO DO SOMETHING AT A DATE IN THE FUTURE. CLEARLY, AT THE TIME OF THE FILING OF THE APPLICATION NO CHANGE OR ALTERATION WITH RESPECT TO THE CANADA PENSION PLAN OR THE ASSOCIATION'S PENSION PLAN HAD BEEN MADE, NOR COULD IT BE ASSERTED WITH ANY DEGREE OF CERTAINTY THAT THE INTENT WOULD, IN FACT, BE IMPLEMENTED. AS THE MATTER TURNED OUT, THE ACTION TAKEN BY THE COMPANY WAS NOT THAT ALLEGEDLY INDICATED BY MR. McQUIRE. THE ACTION TAKEN BY THE COMPANY WAS TO HAVE THE RESPONDENT'S PLAN AND THE CANADA PENSION PLAN STAND "SIDE BY SIDE".

18. IT IS THE OPINION OF THE BOARD THAT CONSENT TO PROSECUTE SHOULD NOT BE GIVEN WHERE, AS IN THE PRESENT CASE, THE ALLEGED VIOLATION HAS NOT OCCURRED AT THE DATE THE APPLICATION TO PROSECUTE IS MADE. AN APPLICATION TO PROSECUTE WHICH IS NOT BASED UPON AN ALLEGATION OF VIOLATION OF THE ACT AT OR BEFORE THE DATE THE APPLICATION IS MADE IS SURELY A NULLITY AND THE SUBSEQUENT HAPPENING OF EVENTS WHICH, AS IT WERE, TEND TO COMPLETE THE APPLICATION OR SUPPLY THE DEFICIENCIES THEREIN, CANNOT CURE SO BASIC A FAULT. IN ADDITION IT WOULD SEEM A PLAIN MISUSE OF ITS DISCRETIONARY POWERS FOR THE BOARD, BY ENTERTAINING SUCH APPLICATIONS, TO OPEN THE DOOR FOR THE FILING OF APPLICATIONS TO PROSECUTE WHICH ARE BASED SOLELY UPON THE STATEMENTS OF INTENT OF ONE OF THE PARTIES TO DO OR REFRAIN FROM DOING SOMETHING IN THE FUTURE WHICH MIGHT OR MIGHT NOT, IF OR WHEN DONE, PROVIDE GROUNDS FOR GRANTING LEAVE TO PROSECUTE.

19. CONSENT TO PROSECUTE IS DENIED HEREIN, BUT SOLELY ON THE GROUNDS THAT THE APPLICATION IS PREMATURE.

INDEXED ENDORSEMENTS - SECTION 79

10709-65-M: WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 97 (COMPLAINANT) v. DONALDSON-BARRON COMPANY LTD. (RESPONDENT) AND UNITED BROTHERHOOD OF CARPENTERS, LOCAL 1747 (RESPONDENT).

BEFORE: J. FINKELMAN, Q.C., CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE AND K. WELLER FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT DONALDSON-BARRON COMPANY LTD.; AND T. E. ARMSTRONG, F. LEGER AND R. REID APPEARING FOR THE RESPONDENT UNITED BROTHERHOOD OF CARPENTERS, LOCAL 1747.

DECISION OF THE BOARD: (FEBRUARY 21, 1966).

APPLICATION BY WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 97 (HEREINAFTER REFERRED TO AS THE "LATHERS UNION") FOR REVIEW BY THE BOARD OF AN INTERIM ORDER OF A JURISDICTIONAL DISPUTES COMMISSION UNDER SUBSECTION 6 OF SECTION 66 OF THE LABOUR RELATIONS ACT. AT THE INITIAL HEARING HELD BY THE BOARD IN CONNECTION WITH THIS APPLICATION, COUNSEL FOR THE UNITED BROTHERHOOD OF CARPENTERS, LOCAL 1747 (HEREINAFTER REFERRED TO AS THE "CARPENTERS UNION", WHICH WAS THE APPLICANT IN THE PROCEEDINGS BEFORE THE JURISDICTIONAL DISPUTES COMMISSION, RAISED A PRELIMINARY OBJECTION CONCERNING THE TIMELINESS OF THE APPLICATION. THE BOARD HEARD THE REPRESENTATIONS OF THE PARTIES ON THIS OBJECTION AND HELD (FOR REASONS GIVEN IN WRITING) THAT THE APPLICATION WAS TIMELY. SUBSEQUENTLY, COUNSEL FOR THE CARPENTERS UNION REQUESTED THAT THE BOARD REVOKE ITS DECISION REFERRED TO ABOVE AND DISMISS THE APPLICATION. THIS REQUEST WAS DENIED AND THE BOARD DIRECTED THAT THE HEARING OF THE APPLICATION CONTINUE. COUNSEL FOR THE CARPENTERS UNION THEN REQUESTED THAT THE APPLICATION BE RELISTED FOR HEARING "FOR THE PURPOSE OF ALLOWING THE PARTIES TO DIRECT ARGUMENT TO THE QUESTION OF WHETHER, IN THE CIRCUMSTANCES OF THIS CASE, INCLUDING THE FACT THAT THE PROJECT REFERRED TO IN THE INTERIM ORDER HAS BEEN COMPLETED, THE BOARD CAN OR SHOULD MAKE ANY POSITIVE DECLARATION OR DETERMINATION. COUNSEL FOR THE LATHERS UNION REPLIED TO THIS REQUEST AS FOLLOWS: "OUR CLIENT HAS ADVISED US THAT IT IS AGREEABLE TO HAVING THIS APPLICATION RE-SCHEDULED FOR HEARING FOR THE PURPOSE OF DIRECTING ARGUMENT ON THE ISSUES AS TO WHETHER OR NOT THE BOARD SHOULD, UNDER THE CIRCUMSTANCES OF THIS CASE, MAKE ANY DETERMINATION

THE APPLICATION WAS THEN RESCHEDULED FOR HEARING AND, AT THE HEARING THAT WAS HELD DECEMBER 15, 1965, IN THIS MATTER, COUNSEL FOR THE CARPENTERS UNION AND FOR THE LATHERS UNION AGREED THAT THE "WORK" CONCERNED - AT THE NORTH YORK BRANSON HOSPITAL - HAD BEEN COMPLETED. COUNSEL FOR THE CARPENTERS UNION MADE TWO ALTERNATIVE SUBMISSIONS:

- (i) THAT, HAVING REGARD TO THE DURATION OF THE INTERIM ORDER, THE BOARD HAD NO JURISDICTION TO GRANT ANY RELIEF TO THE LATHERS UNION;
- (ii) THAT, IF THE BOARD DID HAVE JURISDICTION TO GRANT RELIEF TO THE LATHERS UNION, IT OUGHT NOT TO DO SO AT THIS STAGE.

AS TO THE FIRST SUBMISSION, THE SITUATION IS THAT THE INTERIM ORDER RELATED TO A COMPLAINT THAT THE RESPONDENT DONALDSON-BARRON COMPANY LTD. HAD WRONGLY ASSIGNED THE FOLLOWING WORK, NAMELY: "THE ERECTING OF ACOUSTIC CEILING SYSTEM H. & T. INCLUDING H. BAR, T. BAR AND ACOUSTIC TILE' AT THE NORTH

YORK BRANSON HOSPITAL PROJECT, WILLOWDALE." THE ORDER DECLARED THAT THE DIRECTIVE ISSUED BY THE COMMISSION WAS LIMITED TO "THIS PARTICULAR JOB ONLY". COUNSEL CONTENDED THAT THE BOARD'S JURISDICTION TO REVIEW AN INTERIM ORDER OF A JURISDICTIONAL DISPUTES COMMISSION WAS LIMITED TO CASES IN WHICH THERE IS, AT THE TIME WHEN THE BOARD IS REVIEWING THE ORDER, A PROHIBITION OF A LAWFUL STRIKE OR SOME INTERFERENCE WITH BARGAINING. SINCE IN THIS CASE ANY CONCEIVABLE PROHIBITION OR INTERFERENCE WAS SOMETHING THAT MIGHT HAVE BEEN OPERATIVE IN THE PAST BUT NOT AT THE TIME WHEN THE REQUEST FOR REVIEW WAS MADE, HE SUBMITTED THAT THE BOARD COULD NOT SATISFY ITSELF THAT THE CONDITIONS PRECEDENT TO THE EXERCISE BY IT OF ITS JURISDICTION UNDER SUBSECTION 6 OF SECTION 66 OF THE ACT ARE IN EXISTENCE AT THIS TIME. ACCORDINGLY, HE CONTENDED THAT THE BOARD HAD NO AUTHORITY TO GRANT THE RELIEF SOUGHT. SINCE, FOR THE REASONS INDICATED BELOW, IT IS UNNECESSARY FOR US TO DEAL WITH THIS SUBMISSION, WE DO NOT EXPRESS ANY CONCLUDING OPINION ON THIS POINT, BUT WE DO FEEL IMPULLED TO STATE THAT WE WOULD HAVE BEEN LOATH TO REST OUR DECISION ON THIS GROUND. SUCH A CONSTRUCTION OF THE RELEVANT PROVISIONS MIGHT WELL LEAD TO A STATE OF AFFAIRS, WHERE THERE ARE A NUMBER OF SHORT-TERM PROJECTS, IN WHICH A PARTY MIGHT BE COMPLETELY BARRED FROM OBTAINING RELIEF FROM THE BOARD ALTHOUGH ITS RIGHT TO STRIKE WAS FRUSTRATED AND ITS BARGAINING RIGHTS EFFECTIVELY DESTROYED. IN THIS CONNECTION, REFERENCE MAY BE HAD TO SECTION 4 OF THE INTERPRETATION ACT, R.S.O. 1960, c.191:

THE LAW **SHALL** BE CONSIDERED AS ALWAYS SPEAKING AND, WHERE A MATTER OR THING IS EXPRESSED IN THE PRESENT TENSE, IT IS TO BE APPLIED TO THE CIRCUMSTANCES AS THEY ARISE, SO THAT EFFECT MAY BE GIVEN TO EACH ACT AND EVERY PART OF IT ACCORDING TO ITS TRUE INTENT AND MEANING.

INDEED, COUNSEL FOR THE CARPENTERS UNION CONCEDED THAT, WHERE AN INTERIM ORDER DID PREVENT A LAWFUL STRIKE, A PARTY COULD ASK THE BOARD FOR REVIEW OF THAT INTERIM ORDER NOTWITHSTANDING THAT THE PARTICULAR WORK IN QUESTION HAD BEEN COMPLETED. MOST OF THE ARGUMENT PRESENTED BY COUNSEL FOR THE LATHERS UNION WAS DIRECTED TO SHOW THAT THE BOARD DID HAVE JURISDICTION TO DEAL WITH AN INTERIM ORDER EVEN THOUGH THE WORK INVOLVED WAS COMPLETED. IN THE LIGHT OF THE VIEWS WE HAVE EXPRESSED ON THIS HEAD OF THE ARGUMENT OF COUNSEL FOR THE CARPENTERS UNION, IT IS NOT NECESSARY FOR US TO SAY MORE ON THAT POINT HERE.

WE COME NOW TO THE SECOND HEAD OF THE SUBMISSIONS BY COUNSEL FOR THE CARPENTERS UNION. HIS POSITION, IN SHORT, IS THAT THE DECISION OF THE JURISDICTIONAL DISPUTES COMMISSION TO ISSUE AN INTERIM ORDER IN THIS CASE WAS COME TO, AS PROVIDED FOR IN SUBSECTION 1, AFTER PRELIMINARY CONSULTATIONS AND BEFORE THE PARTIES HAD HAD THE FULL OPPORTUNITY TO PRESENT EVIDENCE AND TO MAKE THEIR SUBMISSIONS, AS WOULD BE THE CASE ON A REQUEST FOR RECONSIDERATION UNDER SUBSECTION 3 OF SECTION 66. IF THE LATHERS UNION WERE TO OBTAIN RELIEF FROM THE BOARD ON THE INSTANT APPLICATION, THE BOARD WOULD IN EFFECT ENABLE THE LATHERS UNION TO BYPASS THE JURISDICTIONAL DISPUTES COMMISSION. COUNSEL FOR THE LATHERS UNION, ON THE OTHER HAND, DRAWS ATTENTION TO THE WORDING OF SUBSECTION 6 OF SECTION 66 WHICH EXPRESSLY CONFERS UPON THE BOARD, IN THE

CIRCUMSTANCES THERE INDICATED, AUTHORITY TO DEAL WITH AN INTERIM ORDER AS WELL AS WITH A FINAL DIRECTION OF A JURISDICTIONAL DISPUTES COMMISSION.

THERE IS NO QUESTION BUT THAT, IN A PROPER CASE, THE BOARD IS AUTHORIZED TO REVIEW AN INTERIM ORDER OF A JURISDICTIONAL DISPUTES COMMISSION AND TO GIVE TO A PARTY ENTITLED THERETO RELIEF AS SET OUT IN SUBSECTION 6 OF SECTION 66. THE ISSUE BEFORE US HERE, HOWEVER, IS WHETHER WE SHOULD GRANT RELIEF TO THE LATHERS UNION AT THIS STAGE, ASSUMING THAT THAT UNION ESTABLISHES THAT IT HAS MET THE CONDITIONS REQUIRED FOR RELIEF. IF IT WERE SHOWN THAT THE INTERIM ORDER PROHIBITED THE LATHERS UNION FROM CALLING, OR ITS MEMBERS FROM ENGAGING IN, A LAWFUL STRIKE IT IS OBVIOUS THAT THE PRESENT APPLICATION WOULD PROVIDE THE ONLY EFFECTIVE RELIEF THAT THE LATHERS UNION COULD HAVE AND THE BOARD SHOULD NOT DENY TO THAT UNION THE OPPORTUNITY OF ESTABLISHING THAT IT IS ENTITLED TO THE RELIEF SOUGHT. SO MUCH INDEED COUNSEL FOR THE CARPENTERS UNION CONCEDED DURING THE COURSE OF THE ARGUMENT, AS WE HAVE ALREADY INDICATED. NO SUCH QUESTION ARISES IN THIS CASE. THE BASIS FOR THE INSTANT APPLICATION, THEN, IS THAT THE INTERIM ORDER OF THE JURISDICTIONAL DISPUTES COMMISSION INTERFERED WITH THE "BARGAINING RIGHTS" THAT THE LATHERS UNION CLAIMS TO BE ENTITLED TO EXERCISE.

THE LABOUR RELATIONS ACT HAS ENTRUSTED TO A JURISDICTIONAL DISPUTES COMMISSION AUTHORITY TO DEAL WITH WORK ASSIGNMENT DISPUTES. TO PARAPHRASE THE LANGUAGE OF ROACH J. A. IN RE THE ONTARIO LABOUR RELATIONS BOARD, BRADLEY ET AL. AND CANADIAN GENERAL ELECTRIC CO. LTD., [1957] C.P. 316, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-1959, ¶15,118, IT IS IMPOSSIBLE TO ESCAPE THE CONCLUSION THAT THE LEGISLATURE HAD CONFIDENCE THAT SUCH A COMMISSION WOULD BE PECULIARLY QUALIFIED TO DEAL WITH THE PRACTICAL PROBLEMS THAT ARISE WITHIN THE AREA OF THE JURISDICTION CONFERRED ON IT. IT IS IMPLICIT IN THE LEGISLATION THAT A JURISDICTIONAL DISPUTES COMMISSION, IN DEALING WITH A WORK ASSIGNMENT DISPUTE, MIGHT ISSUE AN INTERIM ORDER OR DIRECTION THAT RUNS COUNTER TO THE BARGAINING RIGHTS THAT ONE OF THE PARTIES TO THE DISPUTE WOULD BE ENTITLED TO EXERCISE APART FROM THE INTERIM ORDER OR DIRECTION. BARGAINING RIGHTS IS AN AREA IN WHICH THE LABOUR RELATIONS BOARD HAS COMPETENCE BY REASON OF ITS PECULIAR QUALIFICATIONS. THE ACT DOES NOT DELCARE THAT AN INTERIM ORDER OR DIRECTION OF A JURISDICTIONAL DISPUTES COMMISSION SHOULD, IN THE FINAL ANALYSIS, OVERRIDE BARGAINING RIGHTS OR THAT BARGAINING RIGHTS SHOULD HAVE PRIMACY OVER AN INTERIM ORDER OR DIRECTION. THE ACT GIVES TO THE BOARD A DISCRETION. IT MAY QUASH THE INTERIM ORDER OR DIRECTION OF THE JURISDICTIONAL DISPUTES COMMISSION, AND THUS LEAVE THE BARGAINING RIGHTS OF THE PARTIES IN THE SAME CONDITION AS THEY WERE BEFORE THE ORDER OR DIRECTION WAS MADE, OR IT MAY MODIFY THE PRE-EXISTING BARGAINING RIGHTS OF THE PARTIES TO ENABLE AN INTERIM ORDER OR DIRECTION, THAT CONFLICTS WITH SUCH BARGAINING RIGHTS, TO PREVAIL. IN SHORT, IN ARRIVING AT A DECISION ON A REQUEST FOR REVIEW, THE BOARD HAS TO TAKE INTO ACCOUNT BOTH THE BARGAINING RIGHTS THAT ANY OF THE PARTIES MAY HAVE AND THE VIEWS OF THE JURISDICTIONAL DISPUTES COMMISSION ON THE WORK ASSIGNMENT. IT SEEMS TO US THEREFORE THAT, EXCEPT WHERE SPECIAL CIRCUMSTANCES EXIST, E.G., WHERE THE PARTIES ARE BEING HAMPERED IN NEGOTIATING A NEW AGREEMENT OR IN SOME SIMILAR SITUATION, THE BOARD SHOULD HAVE AVAILABLE TO IT THE BEST THINKING OF THE JURISDICTIONAL DISPUTES COMMISSION BEFORE IT ATTEMPTS TO REVIEW AN ORDER THAT

THE JURISDICTIONAL DISPUTES COMMISSION HAS MADE IN A SPECIFIC INSTANCE, AND THE BEST THINKING WOULD EMERGE ON A RECONSIDERATION OF AN INTERIM ORDER WHERE, AS WE HAVE ALREADY POINTED OUT, THE JURISDICTIONAL DISPUTES COMMISSION WOULD HAVE HAD THE ADVANTAGE OF FULL PRESENTATION OF EVIDENCE AND ARGUMENT BY THE PARTIES. WERE WE TO ARRIVE AT ANY OTHER CONCLUSION, IT IS CONCEIVABLE THAT, ALTHOUGH A JURISDICTIONAL DISPUTES COMMISSION MIGHT REACH ONE CONCLUSION ON THE BASIS OF THE INITIAL CONSULTATION THAT IT HOLDS WITH THE PARTIES IN MAKING AN INTERIM ORDER, IT MIGHT COME TO ANOTHER CONCLUSION AFTER IT HAS HAD THE OPPORTUNITY OF CONSIDERING THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES ON RECONSIDERATION OF THE INTERIM ORDER. IF, ON REVIEWING AN INTERIM ORDER, THE BOARD WERE TO ALTER BARGAINING RIGHTS TO ALLOW THE PARTIES TO CONFORM TO THE INTERIM ORDER, IT MIGHT BE CALLED UPON TO REVERSE THAT DECISION AFTER THE JURISDICTIONAL DISPUTES COMMISSION HAD MADE A FINAL DETERMINATION, A STATE OF AFFAIRS WHICH IT IS OBVIOUSLY DESIRABLE THAT WE SHOULD AVOID IF AT ALL POSSIBLE.

THIS APPLICATION IS ACCORDINGLY DISMISSED, BUT WITHOUT PREJUDICE TO THE RIGHT OF THE LATHERS UNION TO FILE A NEW APPLICATION AFTER THE JURISDICTIONAL DISPUTES COMMISSION HAS ISSUED ITS FINAL DETERMINATION IN THIS MATTER. IT WAS SUGGESTED TO US THAT THE JURISDICTIONAL DISPUTES COMMISSION MIGHT TAKE THE POSITION THAT IT WOULD NOT RECONSIDER AN INTERIM ORDER WHERE THE WORK IN QUESTION HAS BEEN COMPLETED. NO AUTHORITY FOR THIS STATEMENT WAS CITED TO US. HOWEVER, IF THAT SHOULD PROVE TO BE THE CASE, OUR DISMISSAL OF THIS APPLICATION IS NOT TO PREJUDICE A REQUEST BY THE LATHERS UNION FOR RECONSIDERATION BY THIS BOARD OF THIS DECISION.

11226-65-M: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) v. RAMSAY INDUSTRIES LIMITED (RESPONDENT) AND BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, GLASS WORKS SECTION OTTAWA LOCAL 200 (INTERVENER).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: JOHN NELLIGAN, M. MCKENNY AND A. LALONDE FOR THE APPLICANT; J. W. TOUHEY AND E. PRANKE FOR THE RESPONDENT; AND D. CAIRNS AND G. BELLEMARE FOR THE INTERVENER.

DECISION OF THE BOARD: (FEBRUARY 25, 1966).

THIS IS AN APPLICATION UNDER SECTION 79 OF THE LABOUR RELATIONS ACT FOR AN ORDER DECLARING THAT THE CERTIFICATE GRANTED TO THE APPLICANT, THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93, HEREINAFTER REFERRED TO AS "LOCAL 93", INCLUDES ALL EMPLOYEES OF THE RESPONDENT, RAMSAY INDUSTRIES LIMITED, HEREINAFTER REFERRED TO AS "RAMSAY", ENGAGED IN THE INSTALLATION OF WINDOWS AND THAT SUCH EMPLOYEES DO NOT FALL WITHIN THE CERTIFICATE OF THE BOARD SUBSEQUENTLY ISSUED TO THE INTERVENER, THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, GLASS WORKS SECTION OTTAWA LOCAL 200, HEREINAFTER REFERRED TO AS "PAINTERS, LOCAL 200". IN EFFECT, THE APPLICANT IS ASKING THE BOARD TO VARY ITS ORIGINAL DECISION AND CERTIFICATE.

THE CERTIFICATE IN QUESTION CERTIFIES LOCAL 93 AS BARGAINING AGENT FOR ALL CARPENTERS AND CARPENTERS' APPRENTICES IN A CERTAIN DEFINED AREA, WITH EXCEPTIONS NOT HERE MATERIAL. THE CERTIFICATE IS DATED MARCH 3, 1965 AND WAS ISSUED UNDER THE CONSTRUCTION INDUSTRY SECTIONS OF THE LABOUR RELATIONS ACT. THE DECISION OF THE BOARD, ALSO DATED MARCH 3, 1965, RECITES THE FACT THAT RAMSAY FAILED TO FILE A REPLY, A LIST OF EMPLOYEES AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. NO OTHER TRADE UNION INTERVENED IN THE PROCEEDING AND EMPLOYEES DID NOT FILE OBJECTIONS. THE BOARD DECISION WAS ACCORDINGLY BASED ON THE MATERIALS FILED BY LOCAL 93, WHICH MATERIALS WERE IN NO WAY CHALLENGED BY ANYONE.

SUBSEQUENT TO THE ISSUING OF THE CERTIFICATE, RAMSAY FILED A REPLY IN WHICH, INTER ALIA, IT WAS ALLEGED THAT IT HAD ENTERED INTO A COLLECTIVE AGREEMENT WITH PAINTERS, LOCAL 200 AFFECTING EMPLOYEES COVERED BY THE CERTIFICATE ISSUED TO LOCAL 93. SUBSEQUENT TO THIS LATE FILING, PAINTERS, LOCAL 200 FILED AN INTERVENTION MAKING THE SAME CLAIM. THE MATTER WAS ACCORDINGLY LISTED FOR HEARING TO CONSIDER THE BOARD'S DECISION IN THE LIGHT OF THE ALLEGATIONS CONTAINED IN THE LATE REPLY AND THE LATE INTERVENTION. THE ONLY ISSUE CONSIDERED BY THE BOARD AT THE HEARING WAS THE QUESTION AS TO WHETHER OR NOT A COLLECTIVE AGREEMENT ALLEGED TO HAVE BEEN IN EFFECT AT THE TIME LOCAL 93 FILED ITS APPLICATION WAS IN FACT A BAR TO THAT APPLICATION. IN WRITTEN REASONS DATED MARCH 24, 1965, THE BOARD HELD THAT THE AGREEMENT WAS NOT A BAR AND ACCORDINGLY FOUND NO JUSTIFICATION FOR VARYING OR REVOKING ITS DECISION OF MARCH 3, 1965.

ON MARCH 25, 1965 THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, THE INTERNATIONAL THAT IS AND NOT ANY LOCAL THEREOF, APPLIED TO BE CERTIFIED FOR ALL EMPLOYEES OF RAMSAY WORKING IN OR OUT OF OTTAWA, EASTVIEW AND THE ADJOINING MUNICIPALITIES SAVE AND EXCEPT NON-WORKING FOREMEN, OFFICE STAFF AND THOSE EMPLOYEES COVERED BY THE BOARD'S CERTIFICATE DATED MARCH 3, 1965. THE AREA SOUGHT DIFFERED FROM THAT GRANTED IN THE CERTIFICATE TO LOCAL 93 WHICH INCLUDED THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBORO TOWNSHIP), RUSSELL AND PRESCOTT. PAINTERS, LOCAL 200 INTERVENED IN THESE PROCEEDINGS AND SOUGHT CERTIFICATION FOR GLAZIERS, GLASSWORKERS AND HELPERS, WORKING IN AND OUT OF RAMSAY'S PREMISES IN OTTAWA. THESE APPLICATIONS FOR CERTIFICATION WERE NOT MADE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. A DIVISION OF THE BOARD CONSTITUTED DIFFERENTLY FROM THAT WHICH HEARD THE EARLIER CASE ORDERED REPRESENTATION VOTE ON APRIL 14, 1965 BETWEEN THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND PAINTERS, LOCAL 200 AMONG THE EMPLOYEES OF RAMSAY IN A BARGAINING UNIT CONSISTING OF ALL EMPLOYEES OF RAMSAY WORKING IN OR OUT OF OTTAWA AND EASTVIEW SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, OFFICE STAFF AND PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED MARCH 3, 1965 ISSUED TO LOCAL 93. PAINTERS, LOCAL 200 WON THE REPRESENTATION VOTE AND THE BOARD IN ITS CERTIFICATE DATED MARCH 17, 1965 CERTIFIED THAT UNIT AS THE BARGAINING AGENT OF ALL EMPLOYEES OF RAMSAY INDUSTRIES WORKING IN OR OUT OF OTTAWA AND EASTVIEW SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED MARCH 3, 1965 ISSUED TO LOCAL 93.

IN THE INITIAL APPLICATION FILED BY LOCAL 93 THAT UNION ASSERTED THAT ON THE DATE OF THE MAKING OF THE APPLICATION THERE WERE FOUR PERSONS WHO WERE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WHICH THE SAID UNION CLAIMED TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. HOWEVER THE UNION SUBMITTED IN SUPPORT OF ITS APPLICATION MEMBERSHIP EVIDENCE FOR SIX EMPLOYEES. IT WILL BE REMEMBERED THAT RAMSAY FAILED TO FILE A REPLY OR A LIST OF EMPLOYEES OR SPECIMEN SIGNATURES FOR EMPLOYEES WITHIN THE TIME LIMIT PRESCRIBED BY THE ACT AND THE BOARD'S RULES OF PROCEDURE. RAMSAY SEEKS TO CHALLENGE THE MAJORITY POSITION OF LOCAL 93 AS AT FEBRUARY 22, 1965, THE DATE OF THE MAKING OF THE INITIAL APPLICATION JUST AS, AT THE HEARING HELD ON FEBRUARY 3, 1966, IT SOUGHT TO INTRODUCE EVIDENCE ALLEGING DURESS ON THE PART OF LOCAL 93 IN OBTAINING ITS EVIDENCE OF MEMBERSHIP. AT THAT HEARING THE BOARD RULED AGAINST ADMITTING EVIDENCE OF THE ALLEGED DURESS ON THE GROUND THAT RAMSAY HAD KNOWLEDGE OF THIS EVIDENCE MANY MONTHS PRIOR TO THE HEARING IN QUESTION AND IT WAS THEN TOO LATE TO PERMIT THE INTRODUCTION OF SUCH EVIDENCE. THE PRESENT CHALLENGE TO THE MAJORITY POSITION OF LOCAL 93 SHOULD PROBABLY BE TREATED IN THE SAME FASHION AS THE ALLEGED EVIDENCE OF DURESS. EVIDENCE WAS, HOWEVER, LED BEFORE THE EXAMINER ON THIS QUESTION AND WE HAVE ACCORDINGLY CONSIDERED THE EVIDENCE BEFORE US ON THIS POINT. IT WOULD APPEAR THAT THERE WERE ELEVEN EMPLOYEES OF RAMSAY EMPLOYED ON FEBRUARY 22, 1965. WITHOUT DECIDING WHETHER AMIE GROULX DOES OR DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND THEREFORE ASSUMING THAT HE WOULD BE INCLUDED IN THE BARGAINING UNIT, WE ARE SATISFIED THAT THE BOARD'S FINDING IN ITS DECISION OF MARCH 3, 1965 THAT "MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE" OUGHT NOT TO BE VARIED OR REVOKED. IN REACHING THIS CONCLUSION WE HAVE TAKEN INTO ACCOUNT THE FACT THAT THREE PERSONS, NAMELY, HAUNER, DUFALT AND ROBERTS WERE INSTALLING GLASS IN FRAMES ON THE DATE OF THE MAKING OF THE APPLICATION.

THERE ARE SEVERAL FEATURES OF THE APPLICATION MADE BY THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ON MARCH 25, 1965 THAT MUST BE NOTED. IN THE FIRST PLACE IT HAS BEEN ESTABLISHED TO OUR SATISFACTION THAT THE MEMBERSHIP EVIDENCE RELIED ON BY THE UNITED BROTHERHOOD ON THAT APPLICATION CONSISTED OF ALL THE MEMBERSHIP EVIDENCE FILED BY LOCAL 93 IN ITS APPLICATION OF FEBRUARY 22, 1965, TOGETHER WITH EVIDENCE OF MEMBERSHIP ON BEHALF OF TWO ADDITIONAL PERSONS. IN THE SECOND PLACE IT IS CLEAR THAT THE MAJORITY OF THE EMPLOYEES WHO VOTED IN THE REPRESENTATION VOTE DIRECTED BY THE BOARD ON THE SECOND APPLICATION WERE PERSONS CLAIMED BY LOCAL 93 AS MEMBERS IN THE FIRST APPLICATION. THE RESULT OF THAT VOTE WAS AS FOLLOWS: ONE BALLOT MARKED IN FAVOUR OF THE APPLICANT, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, SIX BALLOTS MARKED IN FAVOUR OF THE INTERVENER, PAINTERS, LOCAL 200 AND ONE BALLOT SEGREGATED. IN VIEW OF THE RESULT OF THE VOTE IT WAS NOT NECESSARY TO COUNT THE SEGREGATED BALLOT.

WE WERE INFORMED BY COUNSEL FOR THE PRESENT APPLICATION THAT IT WAS THE INTENTION OF THE UNITED BROTHERHOOD, ON THE SECOND APPLICATION, TO SEEK CERTIFICATION FOR THOSE EMPLOYEES WHO WERE NOT COVERED BY THE ORIGINAL CERTIFICATE ISSUED TO LOCAL 93. THE EXPLANATION ADVANCED WAS THAT THE CERTIFICATE GRANTED

TO LOCAL 93 COVERED ONLY EMPLOYEES WHO FELL WITHIN THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT, THAT RAMSAY HAD EMPLOYEES WHO DID NOT FALL UNDER THOSE PROVISIONS AND THAT THE SECOND APPLICATION WAS ONLY INTENDED TO INCLUDE SUCH EMPLOYEES. CONSEQUENTLY THE APPLICATION WAS NOT MADE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. IT IS NOT FOR THIS DIVISION OF THE BOARD TO SAY WHAT WAS INTENDED TO BE INCLUDED IN THE CERTIFICATE ISSUED TO PAINTERS, LOCAL 200, OTHER THAN TO NOTE THAT IT SPECIFICALLY EXCLUDED EMPLOYEES COVERED BY THE CERTIFICATE ISSUED TO LOCAL 93.

IN DUE COURSE, FOLLOWING THE ISSUANCE OF THE SECOND CERTIFICATE, RAMSAY BEGAN BARGAINING WITH BOTH LOCAL 93 AND PAINTERS, LOCAL 200, AND EVENTUALLY A COLLECTIVE AGREEMENT WAS MADE BETWEEN RAMSAY AND PAINTERS, LOCAL 200 ON MAY 21, 1965. IN ARTICLE 11 OF THAT AGREEMENT RAMSAY "RECOGNIZES THE UNION AS THE SOLE COLLECTIVE BARGAINING AGENCY FOR ALL HOURLY RATED EMPLOYEES SAVE AND EXCEPT EXECUTIVE OFFICERS, OFFICE STAFF, PLANT GUARDS, FOREMEN AND THOSE ABOVE THE RANK OF FOREMAN". IT WILL BE NOTED THAT THERE IS NO EXCLUSION OF PERSONS COVERED BY THE CERTIFICATE ISSUED TO LOCAL 93. THIS, NO DOUBT, RESULTED FROM THE FACT THAT, RIGHTLY OR WRONGLY, RAMSAY TOOK THE POSITION THAT IT HAD NO CARPENTERS IN ITS EMPLOY. IT STEADFASTLY MAINTAINED THIS POSITION DURING BARGAINING WITH LOCAL 93. IN DUE COURSE (WE WERE NOT FURNISHED WITH THE MATERIAL DATE) CONCILIATION PROCEDURES UNDER THE LABOUR RELATIONS ACT WERE EXHAUSTED AND LOCAL 93 BECAME ENTITLED TO CALL A STRIKE UNDER THE PROVISIONS OF THAT ACT. THE PRESENT APPLICATION UNDER SECTION 79 OF THE LABOUR RELATIONS ACT WAS MADE ON DECEMBER 22, 1965. IT WOULD APPEAR THAT AFTER THE FILING OF BUT BEFORE THE FIRST HEARING IN THIS APPLICATION TOOK PLACE, LOCAL 93 EITHER CALLED A STRIKE OR AT LEAST CAUSED PICKETS TO BE PLACED ON PREMISES WHERE RAMSAY EMPLOYEES WERE WORKING. WE WERE INFORMED BY BOTH THE RESPONDENT AND THE INTERVENER THAT NONE OF RAMSAY'S EMPLOYEES WENT ON STRIKE AND THAT ALL OF THEM CROSSED THE PICKET LINES SET UP BY LOCAL 93.

THE BOARD HAS GIVEN MUCH ANXIOUS CONSIDERATION TO THE ISSUES RAISED IN THE PRESENT APPLICATION. WHILE UNDOUBTEDLY EACH OF THE PARTIES TO THE APPLICATION HAS TROUBLESOME PROBLEMS IT IS OUR VIEW THAT MOST OF THE DIFFICULTIES HAVE BEEN CREATED BY THE ACTIONS OF THE PARTIES THEMSELVES. IN ESSENCE THE CORE OF THE PROBLEM WAS THE CONFLICT OF JURISDICTIONAL CLAIMS OF LOCAL 93 AND PAINTERS, LOCAL 200. ADDED TO THIS WAS THE FAILURE OF RAMSAY AND PAINTERS, LOCAL 200 TO CONTEST THE INITIAL APPLICATION MADE BY LOCAL 93. IN ADDITION, LOCAL 93 COULD HAVE SUPPLIED THE BOARD WITH MORE INFORMATION THAN IT DID IN MAKING ITS INITIAL APPLICATION. FURTHER, RAMSAY APPEARS TO HAVE GIVEN A VERY MUCH NARROWER INTERPRETATION TO THE WORDS "CARPENTERS AND CARPENTERS' APPRENTICES" AS THEY APPEAR IN THE BOARD'S CERTIFICATE DATED MARCH 3, 1965 THAN IS NECESSARILY IMPLIED IN THOSE TERMS WHEN USED BY THE BOARD IN DESCRIBING A BARGAINING UNIT. THE RESULT OF THE VOTE ON THE SECOND APPLICATION UNDOUBTEDLY SERVED ONLY TO HEIGHTEN THE CONFUSION WHICH SEEMS TO HAVE EXISTED IN THE MINDS OF ALL PARTIES FROM THE OUTSET OF THE APPLICATION MADE BY LOCAL 93. IN FACT THE BOARD IN ITS DECISION OF MARCH 24, 1965 NOTED THAT PROBLEMS MIGHT ARISE AND INVITED THE PARTIES TO COME BACK TO THE BOARD FOR CLARIFICATION SHOULD DIFFICULTIES ARISE DURING THE COURSE OF NEGOTIATIONS FOR A COLLECTIVE AGREEMENT AND THIS INVITATION WAS EXTENDED EVEN BEFORE THERE WAS A SECOND APPLICATION BY THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA. DESPITE THIS, RAMSAY DID NOTHING AN

LOCAL 93 WAITED UNTIL THE BARGAINING PROCESS WAS COMPLETED AND IT WAS IN A STRIKE POSITION BEFORE TAKING ANY ACTION.

AS WAS POINTED OUT ABOVE, THE REAL PROBLEM HERE IS ONE OF COMPETING JURISDICTIONAL CLAIMS. UNQUESTIONABLY THIS WAS RECOGNIZED BY ALL PARTIES EVEN AS EARLY AS THE FIRST APPLICATION OF LOCAL 93. NONE OF THE PARTIES SAW FIT TO MAKE USE OF THE PROVISIONS OF SECTION 66 OF THE LABOUR RELATIONS ACT WHICH WERE ENACTED FOR THE EXPRESS PURPOSE OF PROVIDING A SOLUTION TO SUCH PROBLEMS. AGAIN, NO ATTEMPT WAS MADE BY EITHER OF THE TWO UNIONS INVOLVED TO INVOKE THE PROCEDURES OF THE NATIONAL JOINT BOARD FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES. IT IS OUR CONSIDERED OPINION THAT THE ONLY PRACTICAL SOLUTION TO THE PROBLEMS WHICH THE PARTIES ARE FACING IS THE INVOCATION OF A PROCEDURE WHICH WILL DETERMINE THE JURISDICTIONAL DISPUTE. THEREFORE, WE HAVE CONCLUDED THAT IN ALL THE CIRCUMSTANCES OF THE PRESENT CASE WE MUST DENY THE REQUEST OF THE APPLICANT AND THE VARIOUS COUNTER REQUESTS MADE BY RAMSAY AND PAINTERS, LOCAL 200. IT IS OUR VIEW THAT THE BOARD'S DECISION OF MARCH 3, 1965 SHOULD NOT BE VARIED PENDING THE SETTLEMENT OF THE JURISDICTIONAL DISPUTE WHICH, AS WE HAVE SAID, LIES AT THE ROOT OF THE PARTIES' PROBLEMS. IT IS NOTED THAT IF ANY PARTY SEES FIT TO INVOKE THE PROVISIONS OF SECTION 66 OF THE LABOUR RELATIONS ACT, PROVISION IS MADE IN CERTAIN CIRCUMSTANCES FOR AN APPEAL TO THIS BOARD.

IN THE RESULT, THEREFORE, THE APPLICATION IS DISMISSED.

11292-65-M: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. UNITED CO-OPERATIVES OF ONTARIO (OWEN SOUND BRANCH) (RESPONDENT).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: C. EVANS FOR THE APPLICANT, J. S. NUTTALL AND R. HENNIGAR FOR THE RESPONDENT.

DECISION OF THE BOARD: (FEBRUARY 28, 1966).

1. THE BOARD IS SATISFIED THAT A BONA FIDE MISTAKE HAS BEEN MADE WITH THE RESULT THAT THE PROPER PARTY HAS NOT BEEN NAMED AS RESPONDENT IN THIS APPLICATION. THE BOARD ACCORDINGLY, PURSUANT TO SECTION 78 OF THE ACT, DIRECTS THAT THE NAME GREY FARMERS CO-OPERATIVE (OWEN SOUND) BE STRUCK FROM THE STYLE OF CAUSE AND SUBSTITUTED BY THE NAME UNITED CO-OPERATIVES OF ONTARIO (OWEN SOUND BRANCH).

2. THE APPLICANT PURSUANT TO SECTION 79(2) OF THE ACT IS REQUESTING THAT THE BOARD DETERMINE WHETHER KENNETH BARFOOT WHO IS EMPLOYED IN THE OCCUPATIONAL CLASSIFICATION OF FUEL TRUCK DRIVER-SALESMAN IS AN EMPLOYEE OF THE RESPONDENT FOR PURPOSES OF THE ACT.

3. THE RESPONDENT ACQUIRED THE BUSINESS OF GREY FARMERS CO-OPERATIVE ASSOCIATION (HEREINAFTER REFERRED TO AS THE ASSOCIATION) ON JANUARY 1ST, 1966 AND IS THE SUCCESSOR EMPLOYER OF THE EMPLOYEES OF THE ASSOCIATION. BY VIRTUE OF A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE ASSOCIATION COVERING

"ALL OF ITS EMPLOYEES AT OWEN SOUND SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, OFFICE AND SALES STAFF AND THOSE WHO ARE REGULARLY EMPLOYED FOR LESS THAN 24 HOURS PER WEEK" THE APPLICANT CONTINUES TO HOLD THE BARGAINING RIGHTS FOR THE FORMER EMPLOYEES OF THE ASSOCIATION IN THE BARGAINING UNIT AS ABOVE DESCRIBED. THE APPLICANT AND THE RESPONDENT HAVE MET AND ARE BARGAINING WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT.

4. DURING THE COURSE OF BARGAINING A QUESTION HAS ARISEN WITH RESPECT TO THE STATUS OF KENNETH BARFOOT WHO IS EMPLOYED AS A FUEL TRUCK DRIVER-SALESMAN. THE APPLICANT ASSERTS THAT ON THE BASIS OF BARFOOT'S DUTIES AND RESPONSIBILITIES HE IS AN EMPLOYEE WITHIN THE MEANING OF THE ACT, WHEREAS THE RESPONDENT TAKES THE POSITION THAT BARFOOT EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE ACT. THE RESPONDENT ALSO CLAIMS THAT BARFOOT HAS SALES FUNCTIONS WHICH EXCLUDE HIM FROM THE BARGAINING UNIT AS DESCRIBED.

5. THE BOARD IN THE CANADIAN CAR FORT WILLIAM DIVISION HAWKER SIDDELEY CANADA LTD. CASE BOARD FILE NO. 10386-65-M RECOGNIZED THAT A DETERMINATION OF THE QUESTION AS TO WHETHER A PERSON IS COVERED BY A COLLECTIVE AGREEMENT IS PROPERLY A MATTER FOR A BOARD OF ARBITRATION. AT THE SAME TIME, HOWEVER, THE BOARD FOUND THAT THE QUESTION AS TO WHETHER A PERSON IS AN EMPLOYEE FALLS WITHIN THE JURISDICTION OF THE BOARD UNDER SECTION 79 (2) OF THE ACT. IN THE INSTANT CASE A QUESTION HAS ARISEN BETWEEN THE APPLICANT AND THE RESPONDENT DURING THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT AS TO WHETHER KENNETH BARFOOT IS AN EMPLOYEE FOR THE PURPOSES OF THE ACT. THE BOARD ACCORDINGLY FINDS THAT THE APPLICANT HAS BROUGHT ITSELF WITHIN THE PROVISIONS OF SECTION 79(2) AND IS ENTITLED TO THE RELIEF WHICH IT IS SEEKING. WE WOULD MENTION THAT WHETHER OR NOT BARFOOT MAY BE EXCLUDED FROM THE BARGAINING UNIT AS DESCRIBED ON THE BASIS OF HIS SALES FUNCTION DOES NOT FALL WITHIN THE PURVIEW OF THIS APPLICATION.

6. MR. A. A. MORROW, EXAMINER, ACCORDINGLY IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF THE FUEL TRUCK DRIVER-SALESMAN.

STATISTICAL TABLES FOR FEBRUARY 1966

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	FEBRUARY 1966	1ST 11 MTHS OF FISCAL YEAR 1965-66	1964-65
I. CERTIFICATION	66	883	851
II. DECLARATION TERMINATING BARGAINING RIGHTS	16	66	97
III. DECLARATION OF SUCCESSOR	1	25	7
IV. DECLARATION THAT STRIKE UNLAWFUL	2	48	35
V. DECLARATION THAT LOCK-OUT UNLAWFUL	-	4	5
VI. CONSENT TO PROSECUTE	6	89	66
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	6	96	143
VIII. MISCELLANEOUS	<u>3</u>	<u>48</u>	<u>48</u>
TOTAL	<u>100</u>	<u>1259</u>	<u>1252</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	FEBRUARY 1966	1ST 11 MTHS OF FISCAL YEAR 1965-66	1964-65
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	63	1043	1042

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

		NUMBER DISPOSED OF		
		FEBRUARY 1ST 11 MTHS OF FISCAL YEAR		
		1966	1965-66	1964-65
I.	CERTIFICATION	64	890	828
II.	DECLARATION TERMINATING BARGAINING RIGHTS	3	56	100
III.	DECLARATION OF SUCCESSOR STATUS	9	28	7
IV.	DECLARATION THAT STRIKE UNLAWFUL	5	48	35
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	4	5
VI.	CONSENT TO PROSECUTE	11	86	67
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	13	18	157
VIII.	MISCELLANEOUS	3	98	28
TOTAL		<u>108</u>	<u>1228</u>	<u>1227</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>FEBRUARY 1ST 11 MTHS FISCAL YR.</u>			<u>FEBRUARY 1ST 11 MTHS FISCAL YR.</u>		
	<u>1966</u>	<u>1965-66</u>	<u>1964-65</u>	<u>1966</u>	<u>1965-66</u>	<u>1964-65</u>
<u>CERTIFICATION</u>						
GRANTED	48	659	603	1082	17772	17502
DISMISSED	12	156	148	587	26838	6580
WITHDRAWN	<u>4</u>	<u>75</u>	<u>77</u>	<u>64</u>	<u>3476</u>	<u>2545</u>
TOTAL	<u>64</u>	<u>890</u>	<u>828</u>	<u>1733</u>	<u>48086</u>	<u>26627</u>
<u>TERMINATION</u>						
<u>OF BARGAINING</u>						
<u>RIGHTS</u>						
GRANTED	1	26	48	130	1565	615
DISMISSED	-	25	49	-	765	1175
WITHDRAWN	<u>2</u>	<u>5</u>	<u>3</u>	<u>132</u>	<u>251</u>	<u>92</u>
TOTAL	<u>3</u>	<u>56</u>	<u>100</u>	<u>262</u>	<u>2581</u>	<u>1882</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

<u>NUMBER OF APPLICATIONS</u>		
<u>FEBRUARY 1ST 11 MTHS FISCAL YEAR.</u>		
<u>1966</u>	<u>1965-66</u>	<u>1964-65</u>

III. DECLARATION THAT STRIKE
UNLAWFUL

GRANTED	1	8	13
DISMISSED	-	4	5
WITHDRAWN	<u>4</u>	<u>36</u>	<u>17</u>
TOTAL	<u>5</u>	<u>48</u>	<u>35</u>

IV. DECLARATION THAT LOCKOUT
UNLAWFUL

GRANTED	-	-	1
DISMISSED	-	4	1
WITHDRAWN	<u>-</u>	<u>-</u>	<u>3</u>
TOTAL	<u>-</u>	<u>4</u>	<u>5</u>

V. CONSENT TO PROSECUTE

GRANTED	2	31	13
DISMISSED	1	15	17
WITHDRAWN	<u>8</u>	<u>40</u>	<u>27</u>
TOTAL	<u>11</u>	<u>86</u>	<u>67</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED
OF BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	FEBRUARY 1ST 11 MTHS FISCAL YEAR.		
	1966	1965-66	1964-65
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	1	24	21
POST-HEARING VOTE	3	31	31
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	6	8
POST-HEARING VOTE	4	36	51
BALLOTS NOT COUNTED	-	3	1
TOTAL	<u>8</u>	<u>100</u>	<u>112</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	FEBRUARY 1ST 11 MTHS OF FISCAL YEAR.		
	1966	1965-66	1964-65
*RESPONDENT UNION SUCCESSFUL	-	1	-
RESPONDENT UNION UNSUCCESSFUL	-	20	12
TOTAL	<u>-</u>	<u>21</u>	<u>12</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

MARCH, 1966

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING MARCH 1966

BARGAINING AGENTS CERTIFIED DURING MARCH

NO VOTE CONDUCTED

10070-64-R: INTERNATIONAL BROTHERHOOD OF PULP SULPHITE AND PAPER MILL WORKERS (APPLICANT) V. PROVINCIAL PAPER LIMITED THOROLD DIVISION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THOROLD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, MAINTENANCE PLANNER, PRODUCTION PLANNER, PRODUCT QUALITY CONTROL SUPERVISOR, CONFIDENTIAL SECRETARY TO THE MILL MANAGER, EMPLOYMENT SUPERVISOR, CONFIDENTIAL SECRETARY TO THE EMPLOYMENT SUPERVISOR, SUPERVISORS IN TRAINING, NURSE, WATCHMEN, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS AND ITS LOCAL 290." (61 EMPLOYEES IN THE UNIT).

10812-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE UNIVERSITY OF GUELPH (RESPONDENT) V. THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT AT ITS POWER PLANT AND AVION PATHOLOGY BUILDING IN GUELPH, SAVE AND EXCEPT THE ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER." (24 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 880).

11229-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. QUIGLEY CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (29 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11269-65-R: THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TELCH TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. BABCOCK-WILCOX & GOLDIE-MCCULLOCH LIMITED (RESPONDENT).

UNIT: "ALL DRAFTSMEN AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT AT PORT CREDIT, SAVE AND EXCEPT SUPERVISORS, THOSE ABOVE THE RANK OF SUPERVISOR, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, STUDENTS EMPLOYED ON THE WATERLOO UNIVERSITY ENGINEERING TRAINING PROGRAMME AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (37 EMPLOYEES IN THE UNIT).

11270-65-R: LOCAL UNION 120 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. ADVANCED WIRE DIE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT THE MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT).

11276-65-R: LOCAL 530 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. DELTA ELECTRIC SERVICES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANTS AT SARNIA AND WALLACEBURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF. (10 EMPLOYEES IN THE UNIT).

11336-65-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 141 (APPLICANT) V. THE CANADIAN LINEN SUPPLY (ONTARIO) LIMITED (RESPONDENT) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION, LOCAL 220 (INTERVENER).

UNIT: "ALL ROUTE SALESMEN EMPLOYED BY THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALESMEN AND SERVICE PERSONNEL AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (24 EMPLOYEES IN THE UNIT).

11342-65-R: LOCAL UNION 548 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO-CLC. (APPLICANT) V. ELORA HYDRO ELECTRIC COMMISSION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ELORA, SAVE AND EXCEPT OFFICE STAFF". (3 EMPLOYEES IN THE UNIT).

11345-65-R: FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS DEPARTMENT STORE DIVISION IN HAMILTON SAVE AND EXCEPT THE BOOKKEEPER, STORE OPERATIONS MANAGER, PERSONNEL OFFICER, SELLING MANAGERS, PERSONS ABOVE THE RANK OF SELLING MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD."
(110 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11346-65-R: FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) v. STEINBERG'S LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS DEPARTMENT STORE DIVISION IN METROPOLITAN TORONTO SAVE AND EXCEPT THE BOOKKEEPER, STORE OPERATIONS MANAGER, PERSONNEL OFFICER, SELLING MANAGERS, PERSONS ABOVE THE RANK OF SELLING MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD."
(111 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11369-65-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. NEW SURPASS PETROCHEMICALS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT."
(13 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 892).

11371-65-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES, C.L.C. (APPLICANT) v. COLLEGIATE AND VOCATIONAL INSTITUTE BOARD OF THE TOWNSHIP OF TECK (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF TECK, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, PROFESSIONAL TEACHING STAFF AND OFFICE STAFF."
(17 EMPLOYEES IN THE UNIT).

11372-65-R: LOCAL UNION 636 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO-CLC (APPLICANT) v. ACOUSTICON DICTOGRAPH COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE INSTALLATION, SERVICE AND ASSEMBLY DEPARTMENTS OF THE COMMUNICATIONS DIVISION OF THE RESPONDENT WORKING AT OR OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11375-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF EDUCATION FOR THE TOWNSHIP OF YORK (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF YORK, SAVE AND EXCEPT SUPERINTENDENTS, SUPERVISORS OF CARETAKERS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERINTENDENT, SUPERVISOR OF CARETAKERS OR FOREMAN, PROFESSIONAL TEACHING STAFF, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (166 EMPLOYEES IN THE UNIT).

11395-65-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 141 (APPLICANT) V. ROCKET CARTAGE & DELIVERY (LONDON) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

11399-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF HEALTH - ST. CATHARINES LINCOLN HEALTH UNIT (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES AND PUBLIC HEALTH INSPECTORS OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT CHIEF INSPECTOR, CHIEF CLERK, PERSONS ABOVE THE RANKS OF CHIEF INSPECTOR AND CHIEF CLERK, SECRETARY-TREASURER, PUBLIC HEALTH NURSES, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND ON A CO-OPERATIVE BASIS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11404-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. COADY STORE FIXTURES & EQUIPMENT CO. LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

11406-65-R: HOTEL & RESTAURANT EMPLOYEES' & BARTENDERS' INTERNATIONAL UNION, LOCAL 197 (APPLICANT) V. BRITISH IMPERIAL VETERANS ASSOC. OF HAMILTON. INC. (RESPONDENT).

UNIT: "ALL TAPMEN AND BARTENDERS OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT OWNERS, MANAGERS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11415-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 506 (APPLICANT) V. 20TH CENTURY MASONRY COMPANY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 899).

11417-65-R: NURSES' ASSOCIATION PEEL COUNTY HEALTH UNIT (APPLICANT) V. BOARD OF HEALTH OF THE PEEL COUNTY HEALTH UNIT (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT ASSISTANT SUPERVISORS OF NURSES AND PERSONS ABOVE THE RANK OF ASSISTANT SUPERVISOR OF NURSES." (24 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11421-65-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION, LOCAL 220, B. S. E. I. U. - A.F. OF L., C.I.O. - C.L.C. (APPLICANT) V. MEAFORD GENERAL HOSPITAL (RESPONDENT) V. EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MEAFORD, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHIEF ENGINEER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (39 EMPLOYEES IN THE UNIT).

11426-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 493 (APPLICANT) V. FARQUHAR CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(21 EMPLOYEES IN THE UNIT).

11427-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. THUNDER BAY HARBOR IMPROVEMENTS LIMITED (RESPONDENT) v. LUMBER & SAWMILL WORKERS UNION - LOCAL 2693, OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(15 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 900).

11428-65-R: P O L BATTERIES EMPLOYEES' ASSOCIATION (APPLICANT) v. ELTRA OF CANADA LIMITED (RESPONDENT) v. CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF VAUGHAN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS COVERED BY A CERTIFICATE ISSUED BY THE BOARD TO THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 DATED MARCH 10TH, 1966." (24 EMPLOYEES IN THE UNIT).

11429-65-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) v. MCKINNEY SKILLCRAFT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(49 EMPLOYEES IN THE UNIT).

11430-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. W. S. BRASS MOTOR BODIES LIMITED. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(57 EMPLOYEES IN THE UNIT).

11431-65-R: CANADIAN TRANSPORTATION WORKERS' UNION No. 158, N.C.C.L. (APPLICANT) v. FREEDMAN WHOLESALE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."
(72 EMPLOYEES IN THE UNIT).

11432-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. SUTTON PLACE (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

11433-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. OLYMPIA HOME BAKERY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SHOP LOCATED IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN OR FORELADY, OFFICE AND SALES STAFF, DRIVER-SALESMEN AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 901).

11435-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION # 1071 (APPLICANT) V. MOLLENHAUER CONTRACTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON AND HALDIMAND IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 902).

11437-65-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. ELTRA OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANT IN THE TOWNSHIP OF VAUGHAN." (3 EMPLOYEES IN THE UNIT).

11438-65-R: WINDSOR TYPOGRAPHICAL UNION, No. 553 (APPLICANT) V. THE POST PRINTING COMPANY LTD., A DIVISION OF THOMSON NEWSPAPERS LIMITED (LEAMINGTON) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS COMPOSING ROOM, PRESS ROOM AND BINDERY DEPARTMENT AT LEAMINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

11439-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. MODERN CHALKBOARDS & ARCHITECTURAL SPECIALTIES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

11443-65-R: LOCAL UNION 27, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. SUTTON PLACE (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

11444-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. OSHAWA ENGINEERING & WELDING COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (56 EMPLOYEES IN THE UNIT).

11446-65-R: LOCAL UNION 804, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (APPLICANT) V. RAY ELECTRIC LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." ((10 EMPLOYEES IN THE UNIT).

THE AREAS PROPOSED BY BOTH THE APPLICANT AND THE RESPONDENT CONFLICT WITH OTHER AREAS GRANTED BY THE BOARD. THE AREA NORMALLY GRANTED BY THE BOARD IS IN CITIES OF KITCHENER AND WATERLOO AND ALL OF THE TOWNSHIP OF WATERLOO EXCEPTING

THAT PORTION OF TOWNSHIP LYING SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF WATERLOO WELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD; THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTH WESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD No. 6; THENCE ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP. HAVING REGARD TO THE COLLECTIVE BARGAINING PRACTICE OF VARIOUS TRADE UNIONS AND EMPLOYERS, IT IS OBVIOUS THAT THIS LAST DEFINED AREA IS NO LONGER APPROPRIATE. AFTER DUE CONSIDERATION THE BOARD HAS COME TO THE CONCLUSION THAT THE APPROPRIATE AREA AT THE PRESENT TIME SHOULD CONSIST OF THE COUNTY OF WATERLOO.

11447-65-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 92
(APPLICANT) v. KEYSTONE CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN."
(5 EMPLOYEES IN THE UNIT).

11450-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. AUTOMOTIVE HARDWARE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (105 EMPLOYEES IN THE UNIT).

11453-65-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (APPLICANT) v. H. GERRITS, PLASTERING (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(8 EMPLOYEES IN THE UNIT).

11454-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. CROUSE-HINDE COMPANY OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SECURITY GUARDS, OPERATING ENGINEERS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (223 EMPLOYEES IN THE UNIT).

11455-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. GENERAL IMPACT EXTRUSIONS (MANUFACTURING) LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (351 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSMENT PAGE 903).

11457-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SUTTON PLACE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

11458-65-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA, LOCAL 905 (APPLICANT) V. DR. BALLARD'S ANIMAL FOODS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (85 EMPLOYEES IN THE UNIT).

11459-65-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. DIANA SWEETS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT 187 YONGE STREET IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (61 EMPLOYEES IN THE UNIT).

11462-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #1071 (APPLICANT) V. CHEMONG CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON AND HALDIMAND IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

11466-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1190 (APPLICANT) V. UNITED FORMING LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (20 EMPLOYEES IN THE UNIT).

11471-65-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 141 (APPLICANT) V. THE CANADIAN LINEN SUPPLY (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL ROUTE SALESMEN EMPLOYED BY THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALESMEN, SERVICE PERSONNEL AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

11473-65-R: INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) V. THE BORDEN CHEMICAL COMPANY (CANADA) 1962 LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CHEMISTS, ENGINEERS, LABORATORY TECHNICIANS, NURSES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED UNDER THE WATERLOO UNIVERSITY TRAINING PROGRAMME." (15 EMPLOYEES IN THE UNIT).

11478-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 9 (APPLICANT) V. WRITER PROPERTIES LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP) RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

11491-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NIAGARA STRUCTURAL STEEL COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL UNION 736 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS FABRICATION PLANT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND EMPLOYEES COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (162 EMPLOYEES IN THE UNIT).

11493-65-R: TEXTILE WORKERS UNION OF AMERICA, CLC-AFL-CIO (APPLICANT) V. SPINRITE YARNS & DYERS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LISTOWEL, SAVE AND EXCEPT ASSISTANT FOREMEN, ASSISTANT FORELADIES, PERSONS ABOVE THE RANKS OF ASSISTANT FOREMAN AND ASSISTANT FORELADY, OFFICE AND SALES STAFF, LABORATORY PERSONNEL, QUALITY CONTROL PERSONNEL AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (325 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11495-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. T. F. DOUGHTY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

11500-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) v. GERARD BUILDERS OF NORTH BAY LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF CHAMBERS, STRATHY, BRIGGS AND STRATHCONA IN THE DISTRICT OF NIPISSING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11501-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2 486 (APPLICANT) v. JOHN F. SEGUIN LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF CHAMBERS, STRATHY, BRIGGS AND STRATHCONA IN THE DISTRICT OF NIPISSING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

11502-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, LOCAL 247 (APPLICANT) v. ART LABORATORY FURNITURE LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON AND FRONTENAC, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11503-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) v. ROSS DIVISION, MIDLAND-ROSS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(2 EMPLOYEES IN THE UNIT).

11505-65-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION LOCAL 466
(APPLICANT) V. PARAMOUNT LABELS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (14 EMPLOYEES IN THE UNIT).

11506-65-R: LOCAL 280 OF THE HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION. A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. CENTRE TAVERNS LIMITED, CARRYING ON BUSINESS AS DUFFY'S TAVERN (RESPONDENT).

UNIT: "ALL FULL TIME AND PART-TIME MALE AND FEMALE EMPLOYEES EMPLOYED BY THE RESPONDENT IN ITS BUSINESS WHICH IT CARRIES ON AT TORONTO AS TAPMEN BARTENDERS, BEVERAGE WAITERS, BAR BOYS AND IMPROVERS, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (6 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11507-65-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, A.F.L.-C.I.O., LOCAL UNION 269 (APPLICANT) V. CANADIAN JOHNS-MANVILLE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL SHEET METAL WORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON AND FRONTENAC, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

11508-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. CANADIAN BECHTEL LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11510-65-R: INTERNATIONAL LADIES' GARMENT WORKERS' UNION (APPLICANT) V. ELIZABETH ANN GOWNS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

11514-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) v. RIDEAU RIVER HOMES (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11516-65-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (APPLICANT) v. ESTO HEATING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

11518-65-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. BATHURST CONTAINERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, ART AND DIE DEPARTMENT STAFF, DESIGN DEPARTMENT STAFF, TECHNICAL AND DEVELOPMENT DEPARTMENT STAFF, INDUSTRIAL ENGINEERING DEPARTMENT STAFF, PRODUCTION SCHEDULERS, QUALITY CONTROL DEPARTMENT STAFF, WASTE CO-ORDINATORS, WATCHMEN, AND STATIONARY ENGINEERS EMPLOYED IN THE BOILER ROOM AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (40 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11522-65-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 12-L TORONTO (APPLICANT) v. HOUSTON STANDARD PUBLICATIONS LIMITED (RESPONDENT).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11524-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. PLIBRICO (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(4 EMPLOYEES IN THE UNIT).

11525-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. ATCO INDUSTRIES LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 905).

11525-65-R: BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA - LOCAL UNION 1891 (APPLICANT) V. LUX WHITMORE PAINTING COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 906).

11540-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 527 (AFL-CIO) (CLC) (APPLICANT) V. FEDERAL TILE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 907).

11544-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) v. MEDITERRANEAN CONSTRUCTION COMPANY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11546-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. SCHWENGER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11564-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. DON LA FONTE EXCAVATING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

10999-65-R: THE INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) v. ATLANTIC PACKAGING COMPANY (RESPONDENT) v. PRINTING SPECIALTIES & PAPER PRODUCTS UNION LOCAL 466 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND SALES STAFF." (120 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		101
NUMBER OF PERSONS WHO CAST BALLOTS	98	
NUMBER OF BALLOTS SEGREGATED AND		
NOT COUNTED	3	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	59	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	36	

(SEE INDEXED ENDORSEMENT PAGE 881).

11277-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL.CIO.CLC.
(APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN NORTH BAY AND THE TOWNSHIP OF WEST FERRIS, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT."
(56 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		33
NUMBER OF PERSONS WHO CAST BALLOTS	34	
NUMBER OF BALLOTS SEGREGATED AND		
NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	25	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	8	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING MARCH

NO VOTE CONDUCTED

11133-65-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A.F.L.-C.I.O.-C.L.C.
(APPLICANT) V. H. PERRON ET FILS LIMITEE (RESPONDENT). (35 EMPLOYEES).

11232-65-R: BASIC STRUCTURE STEEL FABRICATORS EMPLOYEES ASSOCIATION (APPLICANT)
V. BASIC STRUCTURE STEEL FABRICATORS LIMITED (RESPONDENT). (18 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 888).

11377-65-R: LOCAL UNION 2163 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. THE WARNOCK HERSEY COMPANY LTD. (RESPONDENT). (5 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 894).

11378-65-R: LOCAL UNION 2163 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. THE WARNOCK HERSEY COMPANY LTD. (RESPONDENT). (3 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 895).

11379-65-R: LOCAL UNION 2163 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. NORTH AMERICAN INSPECTION SERVICES LIMITED (RESPONDENT) V. EMPLOYEES (OBJECTORS). (4 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 896).

11411-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CHELMSFORD VALLEY DISTRICT HIGH SCHOOL BOARD (RESPONDENT). (12 EMPLOYEES).

11412-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CHELMSFORD VALLEY DISTRICT HIGH SCHOOL BOARD (RESPONDENT). (4 EMPLOYEES).

11414-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 597 (APPLICANT) V. MOLLENHAUER CONTRACTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON AND HALDIMAND IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

11425-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. Z. DEVUONO MASONRY Co. LTD. (RESPONDENT). (13 EMPLOYEES).

11434-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. CENTRAL BAKERY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (10 EMPLOYEES).

11445-65-R: KEMP PRODUCTS EMPLOYEES ASSOCIATION (APPLICANT) V. KEMP PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (48 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 902).

11475-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. INDIAN RESIDENTIAL SCHOOL, FORT FRANCES, ONTARIO, ADMINISTERED FOR THE INDIAN AFFAIRS BRANCH OF THE DEPARTMENT OF CITIZENSHIP AND IMMIGRATION, GOVERNMENT OF CANADA, BY THE OBLATE FATHERS (RESPONDENT). (15 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 905).

11496-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DON LAFONTE EXCAVATING LTD. (RESPONDENT). (6 EMPLOYEES).

11511-65-R: LOCAL UNION # 1940, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. THE GLOBE FURNITURE COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL 2-490 (INTERVENER). (25 EMPLOYEES)

11519-65-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. COMMERCIAL INTERIORS AND CABINETS LIMITED (RESPONDENT). (2 EMPLOYEES).

10605-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1747, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) V. DECOR DRY WALL OF ONTARIO LTD. (RESPONDENT) V. WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 97 (INTERVENER)

- AND -

10606-65-R: WOOD WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 97 (APPLICANT) V. DECOR DRY WALL OF ONTARIO LTD. (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1747, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (INTERVENER).

(THE ABOVE TWO CASES ARE CONSOLIDATED)

UNIT: "ALL DRYWALL INSTALLERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(4 EMPLOYEES IN THE UNIT).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

11408-65-R: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK & DISTILLERY WORKERS OF AMERICA AFL-CIO-CLC (APPLICANT) v. COCA-COLA LTD. (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA FALLS, SAVE AND EXCEPT OFFICE STAFF, SPECIAL SALESMEN, FOREMEN AND PERSONS ABOVE THE RANK OF SPECIAL SALESMAN OR FOREMAN." (34 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	33
NUMBER OF PERSONS WHO CAST BALLOTS	33
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	7
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	26

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

11158-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL-CIO-CLC (APPLICANT) v. CANADA CATERING Co. LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MILLHAVEN FIBRES LIMITED, MILLHAVEN, SAVE AND EXCEPT CAFETERIA MANAGER AND PERSONS ABOVE THE RANK OF CAFETERIA MANAGER." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	16
NUMBER OF PERSONS WHO CAST BALLOTS	16
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	7
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	9

11199-65-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) v. ROELOFSON ELEVATOR COMPANY DIVISION OF MONTGOMERY ELEVATOR Co. LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE, SALES AND ENGINEERING STAFF, DRAFTSMEN, SERVICE DEPARTMENT EMPLOYEES AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS." (47 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	43	43
NUMBER OF PERSONS WHO CAST BALLOTS		
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	16	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	27	

11201-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. THE BRITISH MOTOR CORPORATION OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, AUTOMOBILE AND TRACTOR FIELD SERVICE REPRESENTATIVES, AUTOMOBILE AND TRACTOR PARTS FIELD SALES REPRESENTATIVES, AUTOMOBILE AND TRACTOR FIELD SALES REPRESENTATIVES GENERAL PURCHASING AGENT, PRIVATE SECRETARY TO GENERAL MANAGER, PRIVATE SECRETARY TO PARTS DEPARTMENT MANAGER, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A COOPERATIVE TRAINING BASIS WITH A UNIVERSITY." (32 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		35
NUMBER OF PERSONS WHO CAST BALLOTS	35	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	12	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	23	

11305-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) v. PAOLUCCI BAKERY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		6
NUMBER OF PERSONS WHO CAST BALLOTS	6	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3	

11307-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) v. VENEZIA BAKERY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN OR FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3

11309-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. CAPRI BAKERY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MARCH

10970-65-R: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (APPLICANT) V. PARISIAN LAUNDRY CO. OF TORONTO LTD. (RESPONDENT). (185 EMPLOYEES).

11440-65-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION, AFL. CIO. CLC. (APPLICANT) V. DOMINION GASKET & MFG., CO., LIMITED (RESPONDENT). (115 EMPLOYEES).

11469-65-R: LOCAL UNION # 1940, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. ANGLIN-NORCROSS ONTARIO LIMITED (RESPONDENT). (12 EMPLOYEES).

11470-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. NORTHLAND MACHINERY SUPPLY CO. LTD. (RESPONDENT). (2 EMPLOYEES).

11472-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT). (425 EMPLOYEES).

11490-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, LOCAL 837 (APPLICANT) V. GAVIN CONSTRUCTION LIMITED (RESPONDENT). (3 EMPLOYEES).

11504-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. INDEPENDENT COAL & LUMBER CO. (1961) LIMITED (RESPONDENT) V. INTERNATIONAL WOODWORKERS OF AMERICA (INTERVENER). (8 EMPLOYEES).

11520-65-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, B.S.E.I.U., A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. R. C. SEPARATE SCHOOLS OF ST. THOMAS (RESPONDENT). (2 EMPLOYEES).

11523-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION NO. 837 (APPLICANT) V. WILCHAR CONSTRUCTION LIMITED (RESPONDENT). (8 EMPLOYEES).

11539-65-R: LOCAL UNION # 1940, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CAMERON MCINDOO (RESPONDENT). (6 EMPLOYEES).

11553-65-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. CANADA WIRE AND CABLE COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER). (17 EMPLOYEES).

11592-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. KOHEN BOX COMPANY, CONCORD DIVISION PACKAGING WINDSOR, ONTARIO (FORMERLY OJIBWAY, ONTARIO) (RESPONDENT). (35 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

DISPOSED OF DURING MARCH

11227-65-R: CLEMENT BEDARD (APPLICANT) V. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, WINDSOR, ONTARIO (RESPONDENT) V. UNIVERSITY OF WINDSOR (INTERVENER). (126 EMPLOYEES) (GRANTED).

NUMBER OF NAMES ON REVISED VOTERS' LIST	120
NUMBER OF BALLOTS CAST	118
NUMBER OF BALLOTS MARKED IN FAVOUR OF	
RESPONDENT	34
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	84

11386-65-R: HARRY VOGT (APPLICANT) v. SUDBURY GENERAL WORKERS UNION
(LOCAL 101) (RESPONDENT) v. PAWSON'S (SUDBURY) LIMITED (INTERVENER).

- AND -

11387-65-R: REGINALD GILCHRIST (APPLICANT) v. SUDBURY GENERAL WORKERS UNION
(LOCAL 101) (RESPONDENT) v. PAWSON'S (SUDBURY) LIMITED (INTERVENER).

- AND -

11388-65-R: MARTTI PARVIAINEN (APPLICANT) v. SUDBURY GENERAL WORKERS UNION
(LOCAL 101) (RESPONDENT) v. PAWSON'S (SUDBURY) LIMITED (INTERVENER).

- AND -

11389-65-R: ROBERT A. DENNIE (APPLICANT) v. SUDBURY GENERAL WORKERS UNION
(LOCAL 101) (RESPONDENT) v. PAWSON'S (SUDBURY) LIMITED (INTERVENER).

- AND -

11390-65-R: WALTER SANWALD (APPLICANT) v. SUDBURY GENERAL WORKERS UNION
(LOCAL 101) (RESPONDENT) v. PAWSON'S (SUDBURY) LIMITED (INTERVENER).

- AND -

11391-65-R: PETER SMIJAN (APPLICANT) v. SUDBURY GENERAL WORKERS UNION
(LOCAL 101) (RESPONDENT) v. PAWSON'S (SUDBURY) LIMITED (INTERVENER).

- AND -

11392-65-R: JOHN P. KAYES (APPLICANT) v. SUDBURY GENERAL WORKERS UNION
(LOCAL 101) (RESPONDENT) v. PAWSON'S (SUDBURY) LIMITED (INTERVENER).

- AND -

11393-65-R: ADELARD BILADEAU (APPLICANT) v. SUDBURY GENERAL WORKERS UNION
(LOCAL 101) (RESPONDENT) v. PAWSON'S (SUDBURY) LIMITED (INTERVENER).

- AND -

11394-65-R: MARCEL CLOUTHIER (APPLICANT) v. SUDBURY GENERAL WORKERS UNION
(LOCAL 101) (RESPONDENT) v. PAWSON'S (SUDBURY) LIMITED (INTERVENER).
(12 EMPLOYEES) (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 910).

11397-65-R: HARRY MOTT (APPLICANT) v. THE UNITED CEMENT, LIME & GYPSUM
WORKERS INTERNATIONAL UNION CLC (RESPONDENT). (15 EMPLOYEES) (DISMISSED).
(RE: FLETCHER TILE LIMITED).

11419-65-R: PAUL BRILLINGER (APPLICANT) v. UNITED ELECTRICAL, RADIO AND
MACHINE WORKERS OF AMERICA, LOCAL 514 (RESPONDENT) v. GLOBELITE BATTERIES
LIMITED (EASTERN DIVISION) (INTERVENER). (65 EMPLOYEES) (GRANTED).

11423-65-R: MR. ERNEST DOBBS (APPLICANT) v. INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 796 (RESPONDENT) v. THE RUNNYMEDE HOSPITAL (INTERVENER).
(4 EMPLOYEES) (DISMISSED).

11441-65-R: JACQUES QUENETTE, AND JIM ANGEL REPRESENTING THE EMPLOYEES OF
PEPSI-COLA CANADA LTD. (APPLICANTS) v. LOCAL UNION NUMBER 365, OTTAWA, ONTARIO,
INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY
WORKERS OF AMERICA, AFL-CIO-CLC (RESPONDENT) v. PEPSI-COLA CANADA LTD.
(INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF PEPSI-COLA CANADA LTD., AT OTTAWA, SAVE AND EXCEPT SALES SUPERVISORS, ROUTE MANAGERS, FOREMEN, PERSONS ABOVE THE RANKS OF SALES SUPERVISOR, ROUTE MANAGER AND FOREMAN AND OFFICE STAFF."
(64 EMPLOYEES). (GRANTED).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		64
NUMBER OF PERSONS WHO CAST BALLOTS		65
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF RESPONDENT	29	
NUMBER OF BALLOTS MARKED AGAINST		
RESPONDENT	34	

11449-65-R: GARNET PORTER RONALD COLE GARRY SMITH (APPLICANTS) V. LOCAL 440
R.W.D.S.U. (RESPONDENT). (4 EMPLOYEES). (GRANTED).

(RE: BUNNY'S BUNWAGON (JOHN ZAKAROW, OSHAWA)).

11451-65-R: MOYER SAND (1965) LIMITED (APPLICANT) V. UNITED STEELWORKERS OF
AMERICA (RESPONDENT). (4 EMPLOYEES). (GRANTED).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		15
NUMBER OF PERSONS WHO CAST BALLOTS		15
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF RESPONDENT	4	
NUMBER OF BALLOTS MARKED AGAINST		
RESPONDENT	11	

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING MARCH

11409-65-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT)
V. CANADIAN ANILINE & EXTRACT COMPANY LIMITED (RESPONDENT) V. UNITED STEELWORKERS
OF AMERICA (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING MARCH

11489-65-U: FIRESTONE TIRE & RUBBER COMPANY OF CANADA LIMITED, INDUSTRIAL
PRODUCTS DIVISION (APPLICANT) V. T. BELL ET AL (RESPONDENTS). (WITHDRAWN).

11530-65-U: CHARRON TRANSPORT LIMITED (APPLICANT) V. IVAN BONNER ET AL
(RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MARCH

11224-65-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) v. RAMSAY INDUSTRIES LIMITED (RESPONDENT). (WITHDRAWN).

11225-65-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) v. BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, GLASSWORKERS SECTION LOCAL 200 OTTAWA (RESPONDENT). (WITHDRAWN).

11403-65-U: THE SUDBURY AND DISTRICT GENERAL WORKERS' UNION LOCAL 902 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (APPLICANT) v. THE BOARD OF THE COMBINED ROMAN CATHOLIC SEPARATE SCHOOLS OF GARSON AND MACLENNAN (RESPONDENT). (WITHDRAWN).

11410-65-U: LOCAL 178 LF, AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) v. ROBSON-LANG (BARRIE) LIMITED (RESPONDENT). (WITHDRAWN).

11452-65-U: THE SUDBURY AND DISTRICT GENERAL WORKERS' UNION LOCAL 902 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (APPLICANT) v. THE CORPORATION OF THE TOWN OF CHELMSFORD (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING MARCH

11401-65-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. CANADIAN JAMIESON MINES LIMITED (RESPONDENT).

11468-65-U: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (COMPLAINANT) v. DIANA SWEETS LTD., 187 YONGE ST., TORONTO 1, ONT. (RESPONDENT).

11477-65-U: LOCAL UNION 804, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (COMPLAINANT) v. RAY ELECTRIC LIMITED (RESPONDENT).

11480-65-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) v. OSHAWA ENGINEERING & WELDING COMPANY LIMITED (RESPONDENT).

11481-65-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) v. OSHAWA ENGINEERING & WELDING COMPANY LIMITED (RESPONDENT).

11482-65-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) v. OSHAWA ENGINEERING & WELDING COMPANY LIMITED (RESPONDENT).

11494-65-U: INTERNATIONAL HOD CARRIERS' BUILDING & COMMON LABOURERS UNION OF AMERICA, LOCAL 527 (COMPLAINANT) V. MONETA INVESTMENTS LIMITED (RESPONDENT).

11517-65-U: TEXTILE WORKERS UNION OF AMERICA, CLC-AFL-CIO (COMPLAINANT) V. SPINRITE YARNS & DYERS LIMITED (RESPONDENT).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING MARCH

11290-65-M: ST. JOSEPH'S HOSPITAL, SUDBURY (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 161 (RESPONDENT).

11292-65-M: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. UNITED CO-OPERATIVES OF ONTARIO (OWEN SOUND BRANCH) (RESPONDENT).

11326-65-M: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. GREENSPANS KOSHER SAUSAGE CO. LIMITED (RESPONDENT).

REFERENCE TO BOARD PURSUANT TO SECTION 79A OF THE ACT DISPOSED OF DURING MARCH

11338-65-M: BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, (AFFILIATED WITH BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION A.F. OF L. C.I.O. C.L.C.) (TRADE UNION) V. THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 920).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

11094-65-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION AFL-CIO-CLC. (APPLICANT) V. GUILDLINE INSTRUMENTS LTD. (RESPONDENT) V. GUILDLINE EMPLOYEES UNION (INTERVENOR) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 927).

11404-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. COADY STORE FIXTURES & EQUIPMENT CO. LIMITED (RESPONDENT). (REQUEST DENIED).

11438-65-R: WINDSOR TYPOGRAPHICAL UNION, No. 553 (APPLICANT) V. THE POST PRINTING COMPANY LTD., A DIVISION OF THOMSON NEWSPAPERS LIMITED (LEAMINGTON) (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 930).

INDEXED ENDORSEMENTS - CERTIFICATION

10775-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. FALCONBRIDGE NICKEL MINES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., D. M. STOREY AND B. ORMSBY FOR THE APPLICANT, N. MACL. ROGERS, Q.C., AND E. R. MATHER FOR THE RESPONDENT.

DECISION OF: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER. (MARCH 2, 1966).

1. THE APPLICANT APPLIED, ON AUGUST 25TH, 1965, TO BE CERTIFIED AS BARGAINING AGENT FOR "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES" OF THE RESPONDENT IN THE DISTRICT OF SUDBURY, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.
2. THE RESPONDENT PROPOSED CERTAIN ADDITIONAL EXCLUSIONS FROM THE BARGAINING UNIT TO WHICH THE APPLICANT DID NOT AGREE AND ON SEPTEMBER 16TH, 1965, THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS MATTER.
3. SINCE IT APPEARED THAT THE EXAMINER WAS EXPERIENCING CONSIDERABLE DIFFICULTY IN EXPEDITIOUSLY COMPLETING HIS EXAMINATION OF CERTAIN CLASSIFICATIONS, THE BOARD CAUSED THE REGISTRAR TO LIST THIS MATTER FOR CONTINUATION OF HEARING "TO ENTERTAIN THE REPRESENTATIONS OF THE PARTIES AS TO THE MANNER IN WHICH THE EXAMINER'S INQUIRY SHOULD PROCEED WITH RESPECT TO PERSONS INCLUDED IN THE FOLLOWING CLASSIFICATIONS: ENGINEER, SURVEYOR, METALLURGIST, GEOLOGIST, AND GEOLOGICAL TECHNICIAN".
4. FOR THE PURPOSE OF DEALING WITH THE PERSONS INCLUDED IN THE CLASSIFICATIONS DESCRIBED ABOVE, THE BOARD PROVIDED THE PARTIES, AT THE SECOND HEARING IN THIS MATTER, WITH A LIST OF PERSONS WHO WERE CLAIMED BY THE RESPONDENT TO FALL WITHIN THE ABOVE DISPUTED CLASSIFICATIONS.
5. THERE ARE 41 PERSONS WHO ARE LISTED BY THE RESPONDENT UNDER THE GENERAL CLASSIFICATIONS OF EITHER ENGINEER, SURVEYOR, METALLURGIST, GEOLOGIST OR GEOLOGICAL TECHNICIAN. THE PARTIES AGREED THAT 8 OF THESE PERSONS ARE PROFESSIONAL ENGINEERS AND SHOULD BE EXCLUDED FROM THE BARGAINING UNIT PURSUANT TO THE PROVISIONS OF SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT BECAUSE THEY ARE MEMBERS OF THE ENGINEERING PROFESSION, ENTITLED TO PRACTISE IN ONTARIO AND ARE EMPLOYED IN A PROFESSIONAL CAPACITY. THE PARTIES FURTHER AGREED TO THE EXCLUSION, FROM THE BARGAINING UNIT, OF A NINTH PERSON WHO ALSO IS A "PROFESSIONAL ENGINEER" AND WHO IS CLASSIFIED BY THE RESPONDENT UNDER THE GENERAL CLASSIFICATION OF "ASSISTANT".
6. THE BOARD THEREFORE NOTES THE AGREEMENT OF THE PARTIES THAT K.P. HO, F.Y. JAMES, J.D. PURDIE, A.J. MCGUIRE, K. L. AGNEW, F.M. MAKARINSKY, J.F. JACKSON, E.E. HEASLIP AND H.E. NEY ARE MEMBERS OF THE ENGINEERING PROFESSION ENTITLED TO

PRACTISE IN ONTARIO AND ARE EMPLOYED IN A PROFESSIONAL CAPACITY AND ARE ACCORDINGLY EXCLUDED, PURSUANT TO THE PROVISIONS OF SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT, FROM ANY BARGAINING UNIT THAT MIGHT BE DEEMED BY THE BOARD TO BE APPROPRIATE.

7. WHILE THE PURPOSE OF THE HEARING IN THIS MATTER WAS EXPLICITLY SET OUT IN THE NOTICE OF HEARING, THE BOARD CAN NOT REFRAIN FROM COMMENTING ON THE FACT THAT COUNSEL FOR THE PARTIES FAILED TO RENDER TO THE BOARD THE ASSISTANCE IT ANTICIPATED RECEIVING PRIOR TO MAKING ITS DETERMINATION IN THIS MATTER.

8. IT IS COMMON GROUND BETWEEN THE PARTIES THAT THE REMAINING 33 PERSONS EMPLOYED UNDER THE GENERAL CLASSIFICATIONS DESCRIBED ABOVE ARE NOT "MEMBERS" WITHIN THE MEANING OF SECTION 1 (F) OF THE PROFESSIONAL ENGINEERS ACT, R.S.O. 1960, C. 309, NOR ARE THEY "PROFESSIONAL ENGINEERS" AS DESCRIBED BY SECTION 1 (H) OF THE PROFESSIONAL ENGINEERS ACT. IT IS AGREED THAT THEY ARE PERSONS EXCLUDED FROM THE OPERATION OF THE PROFESSIONAL ENGINEERS ACT BY THE PROVISIONS OF SECTION 2 (E) OF THAT ACT AND ARE NOT REQUIRED TO BECOME REGISTERED UNDER THE PROFESSIONAL ENGINEERS ACT.

9. THE RESPONDENT TOOK THE POSITION THAT THE 33 PERSONS COMING UNDER THE DISPUTED CLASSIFICATIONS SHOULD BE EXCLUDED FROM THE BARGAINING UNIT BECAUSE THEY DO SUBSTANTIALLY THE SAME WORK AS THE EXCLUDED "PROFESSIONAL ENGINEERS" EMPLOYED IN THE SAME GENERAL CLASSIFICATION. IN ADDITION, THE RESPONDENT ARGUED THAT, BECAUSE OF THE SPECIALIZED TRAINING OF THESE 33 PERSONS, SOME OF WHOM ARE KNOWN AS PROFESSIONAL METALLURGISTS OR PROFESSIONAL GEOLOGISTS, THEY ARE MEMBERS OF AN ENGINEERING PROFESSION WITHIN THE MEANING OF SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT AND THEREFORE SUCH PERSONS SHOULD BE EXCLUDED ON THE BASIS OF THEIR PROFESSIONAL CAPACITY.

10. SECTION 1 OF THE PROFESSIONAL ENGINEERS ACT READS IN PART AS FOLLOWS:

- "1. (A) 'ASSOCIATION' MEANS THE ASSOCIATION OF PROFESSIONAL ENGINEERS OF THE PROVINCE OF ONTARIO;
- (E) 'LICENSED' MEANS THAT PERMISSION HAS BEEN GRANTED BY THE COUNCIL TO A NON-RESIDENT ENGINEER TO PRACTISE TEMPORARILY WITHOUT BEING REGISTERED, AND 'LICENCE' MEANS THE OFFICIAL CERTIFICATE UNDER THE SEAL OF THE ASSOCIATION EVIDENCING SUCH PERMISSION;
- (F) 'MEMBER' MEANS A REGISTERED MEMBER OF THE ASSOCIATION;
- (H) 'PROFESSIONAL ENGINEER' MEANS A PERSONS WHO PRACTISES PROFESSIONAL ENGINEERING;
- (I) 'PROFESSIONAL ENGINEERING' SAVE AS HEREINAFTER MENTIONED MEANS THE ADVISING ON, THE REPORTING ON, THE DESIGNING OF, THE SUPERVISING OF THE CONSTRUCTION OF, ALL PUBLIC UTILITIES INDUSTRIAL WORKS, RAILWAYS, TRAMWAYS, BRIDGES, TUNNELS, HIGHWAYS, ROADS, CANALS, HARBOUR WORKS, LIGHTHOUSES, RIVER

IMPROVEMENTS, WET DOCKS, DRY DOCKS, FLOATING DOCKS, DREGES, CRANES, DRAINAGE WORKS, IRRIGATION WORKS, WATERWORKS, WATER PURIFICATION PLANTS, SEWERAGE WORKS, SEWAGE DISPOSAL WORKS, INCINERATORS, HYDRAULIC WORKS, POWER TRANSMISSION SYSTEMS, STEEL, CONCRETE AND REINFORCED CONCRETE STRUCTURES, ELECTRIC LIGHTING SYSTEMS, ELECTRIC POWER PLANTS, ELECTRIC MACHINERY, ELECTRIC APPARATUS, ELECTRICAL COMMUNICATION SYSTEMS AND EQUIPMENT, MINERAL PROPERTY, MINING MACHINERY, MINING DEVELOPMENT, MINING OPERATIONS, GAS AND OIL DEVELOPMENTS, SMELTERS, REFINERIES, METALLURGICAL MACHINERY, AND EQUIPMENT AND APPARATUS FOR CARRYING OUT SUCH OPERATIONS, MACHINERY, BOILERS AND THEIR AUXILIARIES, STEAM ENGINES, HYDRAULIC TURBINES, PUMPS, INTERNAL COMBUSTION ENGINES, AND OTHER MECHANICAL STRUCTURES, CHEMICAL AND METALLURGICAL MACHINERY, APPARATUS AND PROCESSES, AND AIRCRAFT AND GENERALLY ALL OTHER ENGINEERING WORKS INCLUDING THE ENGINEERING WORKS AND INSTALLATIONS RELATING TO AIRPORTS, AIRFIELDS AND LANDING STRIPS AND RELATING TO TOWN AND COMMUNITY PLANNING;

- (J) 'REGISTERED' MEANS THAT AN ENGINEER HAS BEEN ADMITTED TO MEMBERSHIP IN THE ASSOCIATION AND THAT HIS NAME HAS BEEN ENROLLED IN THE REGISTER, AND 'CERTIFICATE OF REGISTRATION' MEANS THE OFFICIAL CERTIFICATE UNDER THE SEAL OF THE ASSOCIATION EVIDENCING THE SAME;"

11. SECTION 2 (E) OF THE PROFESSIONAL ENGINEERS ACT READS AS FOLLOWS:

"2. NOTHING IN THIS ACT PREVENTS OR SHALL BE DEEMED TO PREVENT:

- (E) ANY PERSON FROM ADVISING ON OR REPORTING ON ANY MINERAL PROPERTY OR PROSPECT, OR FROM ADVISING ON, REPORTING ON, DESIGNING, OR SUPERVISING THE CONSTRUCTION OF ANY MINING PLANT, MINING MACHINERY, MINING DEVELOPMENT, MINING OPERATIONS, GAS AND OIL DEVELOPMENTS, SMELTERS, REFINERIES, METALLURGICAL MACHINERY, OR EQUIPMENT, APPARATUS, OR PLANT OR ANYTHING IN CONNECTION THEREWITH FOR CARRYING OUT SUCH OPERATIONS, OR CHEMICAL MACHINERY, APPARATUS OR PROCESSES;

OR TO REQUIRE ANY SUCH PERSON TO BECOME REGISTERED OR LICENSED UNDER THIS ACT TO SO PERFORM OR PRACTISE."

12. SECTION 6 OF THE PROFESSIONAL ENGINEERS ACT READS AS FOLLOWS:

"6. FOR THE PURPOSES OF REPRESENTATION UPON THE COUNCIL AND FOR REGISTRATION AND FOR SUCH PURPOSES ONLY AS ARE SET OUT IN THIS ACT, THE MEMBERSHIP OF THE ASSOCIATION IS DIVIDED INTO THE FOLLOWING BRANCHES:

1. CIVIL.
2. MECHANICAL, AERONAUTICAL AND INDUSTRIAL.

3. CHEMICAL AND METALLURGICAL.
4. ELECTRICAL.
5. MINING."

13. SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

"1. (3) FOR THE PURPOSES OF THIS ACT, NO PERSON SHALL BE DEEMED TO BE AN EMPLOYEE,

- (A) WHO IS A MEMBER OF THE ARCHITECTURAL, DENTAL, ENGINEERING, LAND SURVEYING, LEGAL OR MEDICAL PROFESSION ENTITLED TO PRACTISE IN ONTARIO AND EMPLOYED IN A PROFESSIONAL CAPACITY;"

14. THE FACT THAT SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT EXCLUDES MEMBERS OF THE PROFESSIONS REFERRED TO THEREIN WHO ARE ENTITLED TO PRACTISE IN ONTARIO AND ARE EMPLOYED IN A PROFESSIONAL CAPACITY, DOES NOT MEAN THAT THE CHOICE OF SUCH PROFESSIONS IS BASED SOLELY ON THE MENTAL CAPACITY, TRAINING, SKILL OR ABILITY OF SUCH MEMBERS WHEN COMPARED TO OTHER PERSONS OR OTHER PROFESSIONS. A DISBARRED LAWYER AND A DOCTOR WHO FAILS TO REGISTER PURSUANT TO THE PROVISIONS OF THE MEDICAL ACT ARE NOT ENTITLED TO PRACTISE IN ONTARIO. SECTION 48 OF THE MEDICAL ACT, R.S.O. 1960, c. 234, PROVIDES THAT A DOCTOR WHO FAILS TO REGISTER IS LIABLE TO ALL THE PENALTIES IMPOSED BY THAT ACT IN THE SAME MANNER AS UNQUALIFIED OR UNREGISTERED PRACTITIONERS. SUCH DISBARRED OR UNREGISTERED MEMBERS, SINCE THEY ARE NOT "ENTITLED TO PRACTISE IN ONTARIO", ARE ACCORDINGLY COVERED BY THE PROVISIONS OF THE LABOUR RELATIONS ACT NO MATTER WHAT "PROFESSIONAL" SKILL OR ABILITY THEY MAY HAVE OR IN WHAT CAPACITY THEY ARE EMPLOYED.

15. SINCE, PURSUANT TO THE PROVISIONS OF SECTION 6 OF THE PROFESSIONAL ENGINEERS ACT THERE IS PROVISION FOR VARIOUS BRANCHES OF PROFESSIONAL ENGINEERING, INCLUDING THE CHEMICAL AND METALLURGICAL BRANCH AND THE MINING BRANCH, PERSONS WHO ARE NOT "PROFESSIONAL ENGINEERS" BUT WHO DO CHEMICAL, METALLURGICAL OR MINING WORK, EVEN THOUGH MEMBERS OF SOME OTHER PROFESSION WHICH IS NOT REFERRED TO IN THE LABOUR RELATIONS ACT ARE, IN OUR OPINION, EMPLOYEES WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. AGAIN, IN MAKING SUCH A DETERMINATION, THE BOARD IS NOT IN ANY WAY ASSESSING OR COMPARING SKILL, TRAINING OR ABILITY.

16. SECTION 16 (1) OF THE PROFESSIONAL ENGINEERS ACT WHICH PROVIDES THAT ONLY A PERSON WHO IS A MEMBER OF THE "ASSOCIATION OF PROFESSIONAL ENGINEERS OF THE PROVINCE OF ONTARIO" OR HAS OBTAINED A "LICENCE" FROM THE ASSOCIATION MAY USE THE TERM OR TITLE "PROFESSIONAL ENGINEER OR REGISTERED PROFESSIONAL ENGINEER" OR ANY ABBREVIATION THEREOF, PROHIBITS OTHER PERSONS, EXCEPT AS IN THAT ACT OTHERWISE PROVIDED, FROM TAKING AND USING THE TITLE "ENGINEER" OR ANY ABBREVIATION THEREOF IN SUCH CONTEXT OR IN SUCH MANNER AS TO LEAD TO THE BELIEF THAT A PERSON IS A "PROFESSIONAL ENGINEER". IT WOULD APPEAR THAT THE ONLY SECTION OF THE ACT WHICH PROVIDES FOR OTHER PERSONS TO TAKE OR USE THE TITLE "ENGINEER" IS SET OUT IN SUBSECTION 2 (C) OF THE PROFESSIONAL ENGINEERS ACT. SECTION 2 (C) PROVIDES AS FOLLOWS:

"2. NOTHING IN THIS ACT PREVENTS OR SHALL BE DEEMED TO PREVENT,

(C) ANY PERSON FROM PRACTISING HIS TRADE OR CALLING OF A STATIONARY ENGINEER WHO HOLDS A CERTIFICATE UNDER THE OPERATING ENGINEERS ACT OR FROM SO DESIGNATING HIMSELF;"

(EMPHASIS ADDED)

17. HAVING REGARD TO THE PROVISIONS OF SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT, WE ARE OF OPINION THAT ALL THREE FACTORS REFERRED TO IN THAT SECTION MUST BE MET IN ORDER THAT A PERSON BE DEEMED NOT TO BE AN EMPLOYEE FOR THE PURPOSE OF THE LABOUR RELATIONS ACT. THESE THREE FACTORS ARE AS FOLLOWS:

A PERSON MUST BE A MEMBER OF ONE OF THE PROFESSIONS REFERRED TO IN SECTION 1 (3) (A) OF THE ACT AND MUST BE ENTITLED TO PRACTISE IN ONTARIO AND MUST BE EMPLOYED IN A PROFESSIONAL CAPACITY.

ONLY A PERSON WHO MEETS ALL THREE PREREQUISITES IS DEEMED NOT TO BE AN EMPLOYEE FOR THE PURPOSE OF THE LABOUR RELATIONS ACT.

18. DEALING SPECIFICALLY WITH MEMBERS OF THE ENGINEERING PROFESSION WE ARE OF OPINION THAT THE MEMBERS OF THE ENGINEERING PROFESSION REFERRED TO IN SECTION 1 (3) (A) OF THE ACT ARE PERSONS WHO ARE "MEMBERS" WITHIN THE MEANING OF SECTION 1 (F) OF THE PROFESSIONAL ENGINEERS ACT AND SUCH PERSONS MUST BE ENTITLED TO PRACTISE IN ONTARIO AND MUST BE EMPLOYED IN A PROFESSIONAL CAPACITY. IN OUR OPINION ONLY "PROFESSIONAL ENGINEERS" (WITHIN THE MEANING OF SECTION 1 (H) OF THE PROFESSIONAL ENGINEERS ACT) WHO ARE "MEMBERS" (WITHIN THE MEANING OF SECTION 1 (F) OF THE PROFESSIONAL ENGINEERS ACT) OF THE "ASSOCIATION OF PROFESSIONAL ENGINEERS OF THE PROVINCE OF ONTARIO", WHO ARE ENTITLED TO PRACTISE IN ONTARIO AND WHO ARE EMPLOYED IN A PROFESSIONAL CAPACITY, MEET ALL OF THE REQUIREMENTS OF SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT.

19. IT IS TO BE NOTED THAT IN DEFINING "PROFESSIONAL ENGINEERING", SECTION 1 (1) OF THE PROFESSIONAL ENGINEERS ACT PROVIDES IN PART THAT "PROFESSIONAL ENGINEERING SAVE AS HEREINAFTER MENTIONED MEANS". SECTION 2 OF THAT ACT SETS OUT CERTAIN WORK WHICH FALLS WITHIN THE EXCEPTION REFERRED TO IN SECTION 1 (1) AND ACCORDINGLY SUCH WORK IS NOT "PROFESSIONAL ENGINEERING" AS DEFINED BY SECTION 1 (1). SINCE THE PARTIES HAVE AGREED THAT THE PERSONS WITH WHOM WE ARE HERE CONCERNED ARE EMPLOYED UNDER THE PROVISIONS OF SECTION 2 (E) OF THE PROFESSIONAL ENGINEERS ACT, IT FOLLOWS THAT, EVEN THOUGH EMPLOYED IN AN ENGINEERING CAPACITY, THEY ARE NOT DOING "PROFESSIONAL ENGINEERING" AS DEFINED IN SECTION 1 (1) AND ACCORDINGLY ARE NOT "PROFESSIONAL ENGINEERS" WITHIN THE MEANING OF SECTION 1 (H) OF THAT ACT. MOREOVER, NONE OF SUCH PERSONS ARE "MEMBERS" OF OR "LICENSED" BY THE "ASSOCIATION OF PROFESSIONAL ENGINEERS". ACCORDINGLY THEY ARE NOT MEMBERS OF THE ENGINEERING PROFESSION ENTITLED TO PRACTISE IN ONTARIO AS REQUIRED BY SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT AND, APART FROM THE PROVISIONS OF SECTION 1 (3) (B) OF THE ACT ARE ELIGIBLE FOR INCLUSION IN A BARGAINING UNIT.

20. IT IS READILY APPARENT THAT PROFESSIONAL ENGINEERS SPECIALIZE IN VARIOUS FIELDS INCLUDING CHEMICAL AND METALLURGICAL AND MINING. THE FACT THAT OTHER

PERSONS CAN AND DO PRACTISE A PROFESSION OR TRADE AND WORK IN THESE FIELDS WITHOUT CONTRAVENING THE PROFESSIONAL ENGINEERS ACT DOES NOT MAKE SUCH PERSONS PROFESSIONAL ENGINEERS, BUT ON THE CONTRARY, THE FACT THAT THEY ARE EXCLUDED FROM THE OPERATION OF THE PROFESSIONAL ENGINEERS ACT BY THE TERMS OF SECTION 2 OF THAT ACT, LOGICALLY LEADS US TO THE CONCLUSION THAT SUCH PERSONS ARE NOT MEMBERS OF THE ENGINEERING PROFESSION ENTITLED TO PRACTISE IN ONTARIO, NO MATTER WHAT SKILL OR ABILITY THEY HAVE OR IN WHAT CAPACITY THEY ARE EMPLOYED.

21. WE THEREFORE FIND THAT THE PERSONS EMPLOYED IN THE DISPUTED CLASSIFICATIONS ARE NOT MEMBERS OF THE ENGINEERING PROFESSION ENTITLED TO PRACTISE IN ONTARIO AS REQUIRED BY SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT.

22. FOR THE PURPOSES OF CLARITY THE BOARD THEREFORE DECLARES THAT
K. E. BLASZCZYK, CLASSIFIED AS DESIGN ENGINEER MECHANICAL,
F. G. PICKARD, CLASSIFIED AS STRATHCONA PROJECT METALLURGICAL ENGINEER,
M. DEROUIN, CLASSIFIED AS FALCONBRIDGE MINE VENTILATION ENGINEER,
T. F. PUGSLEY, CLASSIFIED AS FALCONBRIDGE MINE JR. PLANNING ENGINEER,
K. A. BAILLIE, CLASSIFIED AS STRATHCONA MINE PLANNING ENGINEER,
J. B. WATTS, CLASSIFIED AS STRATHCONA MINE PLANNING ENGINEER,
J. M. WOJAKOWSKI, CLASSIFIED AS HARDY MINE ENGINEER,
E. E. EASTON, CLASSIFIED AS MINE RESEARCH ENGINEER PROJECTS,
I. J. DICKIE, CLASSIFIED AS MINE RESEARCH ENGINEER,
J. S. SCOTT, CLASSIFIED AS INSTRUMENTATION ENGINEER,
H. M. HODGSON, CLASSIFIED AS FALCONBRIDGE FIELD SURVEYOR,
W. G. PESCHKE, CLASSIFIED AS ONAPING FIELD SURVEYOR,
H. S. BAINS, CLASSIFIED AS RESEARCH METALLURGIST,
A. C. BIGG, CLASSIFIED AS RESEARCH METALLURGIST,
P. R. BIRCH, CLASSIFIED AS RESEARCH METALLURGIST,
M. A. GOUDIE, CLASSIFIED AS RESEARCH MINERALOGIST,
C. R. JOSE, CLASSIFIED AS RESEARCH METALLURGIST,
C. B. MACKENZIE, CLASSIFIED AS RESEARCH METALLURGIST,
J. D. RANNIE, CLASSIFIED AS RESEARCH METALLURGIST,
A. L. MCKAGUE, CLASSIFIED AS PYRRHOTITE PLANT METALLURGIST,
R. W. SISCOE, CLASSIFIED AS HARDY FEGUNIS MILLS METALLURGIST,
T. P. ARMSTRONG, CLASSIFIED AS FALCONBRIDGE MINE UDG GEOLOGIST,
P. M. FILLMORE, CLASSIFIED AS FALCONBRIDGE MINE UDG GEOLOGIST,
R. H. HEWINS, CLASSIFIED AS PETROGRAPHER GEOLOGIST,
M. A. NICHOL, CLASSIFIED AS FALCONBRIDGE MINE DEVELOP GEOLOGIST,
W. D. HARRISON, CLASSIFIED AS SPECIAL STUDIES GEOLOGIST,
G. M. ARCHIBALD, CLASSIFIED AS ASSISTANT SPECIAL STUDIES GEOLOGIST,
R. G. KREINER, CLASSIFIED AS STRATHCONA UDG GEOLOGIST,
J. T. EGAN, CLASSIFIED AS FALCONBRIDGE MINE GEOLOGICAL TECHNICIAN,
F. D. DELABBO, CLASSIFIED AS HARDY MINE UDG GEOLOGICAL TECHNICIAN,
D. A. FRASER, CLASSIFIED AS STRATHCONA GEOLOGICAL TECHNICIAN,
J. C. SECENJ, CLASSIFIED AS HARDY MINE UDG GEOLOGICAL TECHNICIAN, AND
H. C. WESLAKE, CLASSIFIED AS STRATHCONA UDG GEOLOGICAL TECHNICIAN,
ARE NOT MEMBERS OF THE ENGINEERING PROFESSION ENTITLED TO PRACTISE IN ONTARIO AND ARE THEREFORE NOT EXCLUDED PURSUANT TO THE PROVISIONS OF SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT FROM ANY BARGAINING UNIT WHICH THE BOARD MIGHT DEEM TO BE APPROPRIATE.

23. HOWEVER, SO THERE WILL BE NO MISUNDERSTANDING, THE BOARD IN MAKING THIS DETERMINATION HAS IN NO WAY TOUCHED ON THE ISSUE OF WHETHER OR NOT THE ABOVE

NAMED PERSONS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT.

24. IN ADDITION, APART FROM ANY MANAGERIAL FUNCTIONS WHICH MAY BE EXERCISED BY THE ABOVE NAMED PERSONS, THE BOARD HAS NOT DETERMINED WHETHER OR NOT THEY SHOULD BE INCLUDED IN THE SAME BARGAINING UNIT AS THE OFFICE, CLERICAL AND TECHNICAL STAFF OF THE RESPONDENT OR SHOULD FORM A SEPARATE BARGAINING UNIT OF THEIR OWN. THE BOARD IS PREPARED TO HEAR REPRESENTATIONS ON THAT ISSUE AFTER THE EXAMINER'S REPORT HAS BEEN COMPLETED AND THE BOARD HAS MADE A DETERMINATION WITH RESPECT TO ANY MANAGERIAL FUNCTIONS THE ABOVE NAMED PERSONS ARE ALLEGED TO HAVE.

25. MR. F. D. EDWARDS, EXAMINER, IS ACCORDINGLY DIRECTED TO PROCEED WITH HIS EXAMINATION IN ACCORDANCE WITH THE AUTHORIZATION SET FORTH IN THE BOARD'S DECISION OF SEPTEMBER 15TH, 1965, TAKING INTO CONSIDERATION THE BOARD'S DECISION AS SET OUT ABOVE.

DECISION OF: BOARD MEMBER H. F. IRWIN. (MARCH 2, 1966).

1. I DISSENT.

2. IN SUBSTANCE, THE MAJORITY DECISION FINDS THAT:

(A) ONLY "PROFESSIONAL ENGINEERS" (WITHIN THE MEANING OF SECTION 1 (H) OF THE PROFESSIONAL ENGINEERS ACT) WHO ARE "MEMBERS" (WITHIN THE MEANING OF SECTION 1 (F) OF THE PROFESSIONAL ENGINEERS ACT) OF THE "ASSOCIATION OF PROFESSIONAL ENGINEERS OF THE PROVINCE OF ONTARIO", WHO ARE ENTITLED TO PRACTISE IN ONTARIO AND WHO ARE EMPLOYED IN A PROFESSIONAL CAPACITY, MEET ALL THE REQUIREMENTS OF SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT;

(B) THE PERSONS IN THE DISPUTED CLASSIFICATIONS ARE NOT ENGAGED IN "PROFESSIONAL ENGINEERING" AS DEFINED IN SECTION 1 (I) OF THE PROFESSIONAL ENGINEERS ACT AND, THEREFORE, ARE NOT "PROFESSIONAL ENGINEERS" WITHIN THE MEANING OF SECTION 1 (H) OF THAT ACT;

(C) NONE OF THESE PERSONS ARE "MEMBERS" OF OR "LICENSED" BY THE "ASSOCIATION OF PROFESSIONAL ENGINEERS" AND, THEREFORE, ARE NOT MEMBERS OF THE ENGINEERING PROFESSION ENTITLED TO PRACTISE IN ONTARIO AS REQUIRED BY SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT; AND

(D) AS THESE PERSONS ARE EXCLUDED FROM THE OPERATION OF THE PROFESSIONAL ENGINEERS ACT BY THE PROVISIONS OF SECTION 2 OF THAT ACT THEY ARE NOT MEMBERS OF THE ENGINEERING PROFESSION ENTITLED TO PRACTISE IN ONTARIO NO MATTER WHAT SKILL OR ABILITY THEY HAVE OR IN WHAT CAPACITY THEY ARE EMPLOYED.

3. WITH RESPECT, I CANNOT CONCUR IN THESE FINDINGS. SECTION 1 (I) OF THE

PROFESSIONAL ENGINEERS ACT READS IN PART AS FOLLOWS:

- (1) "PROFESSIONAL ENGINEERING" SAVE AS HEREINAFTER MENTIONED MEANS THE ADVISING ON, THE REPORTING ON, THE DESIGNING OF, THE SUPERVISING OF THE CONSTRUCTION OF ALL...MINERAL PROPERTY, MINING MACHINERY, MINING DEVELOPMENT, MINING OPERATIONS, GAS AND OIL DEVELOPMENTS, SMELTERS, REFINERIES, METALLURGICAL MACHINERY, AND EQUIPMENT AND APPARATUS FOR CARRYING OUT SUCH OPERATIONS... CHEMICAL AND METALLURGICAL MACHINERY, APPARATUS AND PROCESSES, ...;

(EMPHASIS ADDED)

4. SECTION 2 (E) OF THE PROFESSIONAL ENGINEERS ACT READS AS FOLLOWS:

2. NOTHING IN THIS ACT PREVENTS OR SHALL BE DEEMED TO PREVENT,

- (E) ANY PERSON FROM ADVISING ON OR REPORTING ON ANY MINERAL PROPERTY OR PROSPECT, OR FROM ADVISING ON, REPORTING ON, DESIGNING, OR SUPERVISING THE CONSTRUCTION OF ANY MINING PLANT, MINING MACHINERY, MINING DEVELOPMENT, MINING OPERATIONS, GAS AND OIL DEVELOPMENTS, SMELTERS, REFINERIES, METALLURGICAL MACHINERY, OR EQUIPMENT, APPARATUS, OR PLANT OR ANYTHING IN CONNECTION THEREWITH FOR CARRYING OUT SUCH OPERATIONS, OR CHEMICAL MACHINERY, APPARATUS OR PROCESSES;

OR TO REQUIRE ANY SUCH PERSON TO BECOME REGISTERED OR LICENSED UNDER THIS ACT TO SO PERFORM OR PRACTISE. (EMPHASIS ADDED)

5. SECTION 1 (1) OF THE PROFESSIONAL ENGINEERS ACT STATES THAT "PROFESSIONAL ENGINEERING" INCLUDES THE ENGINEERING WORK DESCRIBED THEREIN AS IT RELATES TO THE MINING INDUSTRY, GAS AND OIL DEVELOPMENTS, SMELTERS, REFINERIES, METALLURGICAL AND CHEMICAL PROCESSES.

6. SECTION 2 (E) OF THE PROFESSIONAL ENGINEERS ACT DOES NOT REMOVE THIS WORK FROM THE SCOPE OF "PROFESSIONAL ENGINEERING" AS DEFINED IN SECTION 1 (1) OF THE ACT BUT MERELY ALLOWS PERSONS OTHER THAN REGISTERED PROFESSIONAL ENGINEERS TO ALSO PERFORM THIS WORK WITHOUT BECOMING REGISTERED OR LICENSED UNDER THE ACT TO SO PERFORM OR PRACTISE. IN THE CIRCUMSTANCES, THESE PERSONS COULD BE MEMBERS OF THE ENGINEERING PROFESSION ENTITLED TO PRACTISE IN ONTARIO AND EMPLOYED IN A PROFESSIONAL CAPACITY. IF ANY OF THESE PERSONS ARE GRADUATES FROM A UNIVERSITY RECOGNIZED BY THE COUNCIL OF THE ASSOCIATION OF PROFESSIONAL ENGINEERS OF THE PROVINCE OF ONTARIO IN ANY BRANCH OF ENGINEERING OR SCIENCE THE PRACTISE OF WHICH CONSTITUTES PROFESSIONAL ENGINEERING AND HAVE PERFORMED THIS WORK FOR AT LEAST ONE YEAR FOLLOWING GRADUATION, SURELY THEY MUST BE RECOGNIZED AS MEMBERS OF THE ENGINEERING PROFESSION EMPLOYED IN A PROFESSIONAL CAPACITY AND ENTITLED TO PRACTISE IN ONTARIO. SUCH PERSONS COULD JOIN THE ASSOCIATION OF PROFESSIONAL ENGINEERS AT ANY TIME BY MERELY COMPLETING AN APPLICATION FORM AND PAYING THE PRESCRIBED FEE. IN INSISTING THAT SUCH PERSONS BE REGISTERED PROFESSIONAL

ENGINEERS, THIS BOARD IS REQUIRING THEM TO MEET A STANDARD WHICH THE PROFESSIONAL ENGINEERS ACT SPECIFICALLY STATES SHALL NOT BE REQUIRED OF THEM WHILE ENGAGED IN THEIR PRESENT EMPLOYMENT EVEN THOUGH THEY ARE PERFORMING PROFESSIONAL ENGINEERING WORK AS DEFINED IN SECTION 1 (1) OF THAT ACT.

7. IF THE MAJORITY DECISION IS CORRECT IN FINDING THAT THE ENGINEERING WORK DEFINED IN SECTION 2 (E) OF THE PROFESSIONAL ENGINEERS ACT IS NOT PROFESSIONAL ENGINEERING, THEN THE PERSONS IN THE EMPLOY OF THE RESPONDENT WHO ARE REGISTERED PROFESSIONAL ENGINEERS ARE NOT DOING PROFESSIONAL ENGINEERING WORK AND IN ACCORDANCE WITH THE MAJORITY DECISION ARE NOT PROFESSIONAL ENGINEERS AND DO NOT MEET THE REQUIREMENTS TO BE EXEMPTED FROM THE LABOUR RELATIONS ACT UNDER THE PROVISIONS OF SECTION 1 (3) (A) THEREOF.

8. FOR THESE REASONS, I BELIEVE THAT SOME OF THE PERSONS IN THE DISPUTED CLASSIFICATIONS MAY FULLY QUALIFY FOR EXEMPTION FROM THE LABOUR RELATIONS ACT UNDER SECTION 1 (3) (A) THEREOF. IT SHOULD BE CAREFULLY NOTED THAT THIS SECTION DOES NOT USE THE WORDS "PROFESSIONAL ENGINEER" BUT RATHER THE WORDS "A MEMBER OF THE...ENGINEERING...PROFESSION...". I WOULD HAVE DIRECTED MR. F. D. EDWARDS, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD ON THE EDUCATIONAL QUALIFICATIONS, THE NAME OF THE UNIVERSITY FROM WHICH THE PERSON GRADUATED AND THE DEGREES OBTAINED IN ENGINEERING OR SCIENCE, ENGINEERING EXPERIENCE, MEMBERSHIP IN ANY ENGINEERING ASSOCIATION OR SOCIETY AND THE PRECISE NATURE OF THE ENGINEERING WORK WHICH EACH OF THESE PERSONS PERFORMED ON THE DATE THE APPLICATION WAS MADE. THEN, AND ONLY THEN, WOULD I CONSIDER MYSELF IN POSSESSION OF SUFFICIENT EVIDENCE TO DECIDE IF THE PERSONS IN THE DISPUTED CLASSIFICATIONS ARE MEMBERS OF THE ENGINEERING PROFESSION ENTITLED TO PRACTISE IN ONTARIO AND EMPLOYED IN A PROFESSIONAL CAPACITY.

10812-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. THE UNIVERSITY OF GUELPH (RESPONDENT) AND THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (INTERVENER).

BEFORE: J. FINKELMAN, Q.C., CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDERMOTT.

DECISION OF THE BOARD: (MARCH 17, 1966).

. . .

3. FOLLOWING THE INITIAL HEARING IN THIS MATTER, AN EXAMINER WAS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND THE DUTIES AND RESPONSIBILITIES OF THE PERSON CLASSIFIED BY THE RESPONDENT AS ASSISTANT CHIEF ENGINEER.

4. FOLLOWING THE SECOND HEARING IN THIS MATTER, THE EXAMINER WAS DIRECTED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE RELATIONSHIP, INCLUDING INTERCHANGE, BETWEEN STATIONARY ENGINEERS WORKING IN THE RESPONDENT'S POWER PLANT AND STATIONARY ENGINEERS WORKING IN THE RESPONDENT'S AVION PATHOLOGY BUILDING.

5. AT A MEETING CONVENED BY THE EXAMINER ON MARCH 4TH, 1966, THE PARTIES AGREED THAT THERE WAS A COMMUNITY OF INTEREST AND A RELATIONSHIP EXISTING BETWEEN THE TWO OPERATIONS OF THE RESPONDENT WHICH MADE THESE TWO OPERATIONS A UNIT

APPROPRIATE FOR COLLECTIVE BARGAINING. THE PARTIES ALSO AGREED THAT THERE WAS AN INTERCHANGE OF PERSONNEL BETWEEN THE TWO LOCATIONS AND THAT THE INTERCHANGE WAS ANTICIPATED TO CONTINUE IN THE FUTURE.

6. HAVING REGARD TO THE FOREGOING AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT AT ITS POWER PLANT AND AVION PATHOLOGY BUILDING IN GUELPH, SAVE AND EXCEPT THE ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

* * *

10999-65-R: THE INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) v. ATLANTIC PACKAGING COMPANY (RESPONDENT) AND PRINTING SPECIALTIES & PAPER PRODUCTS UNION LOCAL 466 (INTERVENER) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: IAN G. SCOTT, ROD BARRETT AND PAT V. GRASSO FOR THE APPLICANT, SYDNEY M. HARRIS, Q.C., FOR THE RESPONDENT, AND LAURENCE C. ARNOLD AND JOHN STEELE FOR THE INTERVENER AND GROUP OF EMPLOYEES.

DECISION OF BOARD MEMBER J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE: (MARCH 10, 1966),

1. FOLLOWING THE REPORT OF THE RETURNING OFFICER, DATED JANUARY 24TH, 1966, WITH RESPECT TO THE REPRESENTATION VOTE HELD IN THIS MATTER, THE INTERVENER (THE INCUMBENT TRADE UNION) FILED A STATEMENT OF OBJECTIONS IN WHICH IT ALLEGED THAT THE APPLICANT WAS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT, AND THAT, THEREFORE, THE REPRESENTATION VOTE AND ANY POSSIBLE CERTIFICATION RESULTING FROM IT WERE NULLITIES. AT THE HEARING HELD WITH RESPECT TO THESE OBJECTIONS, COUNSEL FOR THE INTERVENER AGREED THAT THERE HAD BEEN NO IRREGULARITIES WITH RESPECT TO THE TAKING OF THE VOTE AND THAT THE ONLY OBJECTION WENT TO THE STATUS OF THE APPLICANT AS A TRADE UNION. COUNSEL STATED THAT THE FACTS ON WHICH HE RELIED HAD COME TO HIS ATTENTION SINCE THE FIRST HEARING WAS HELD IN THIS MATTER.

2. IN EFFECT, THE INTERVENER ASKS THE BOARD TO REVOKE ITS FINDING CONTAINED IN PARAGRAPH 1 OF THE ENDORSEMENT OF THE RECORD IN THIS MATTER, DATED NOVEMBER 30TH, 1965, THAT:

THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

3. THE INTERVENER CALLED EVIDENCE, WHICH IS NOT CONTRADICTED AND WHICH ESTABLISHED THE FOLLOWING FACTS:

- (1) SOME TIME PRIOR TO 1960 THERE EXISTED AN ORGANIZATION KNOWN AS "DISTRICT 50, UNITED MINE WORKERS OF AMERICA". WHILE THIS

ORGANIZATION HAD A SET OF RULES DISTINCT FROM THOSE OF ITS PARENT BODY, IT WAS A PART OF AND SUBJECT TO THE CONSTITUTION OF THE UNITED MINE WORKERS OF AMERICA, A WELL-KNOWN INTERNATIONAL TRADE UNION.

- (2) IN 1960, AT A FOUNDING CONVENTION, THE ORGANIZATION KNOWN AS DISTRICT 50, UNITED MINE WORKERS OF AMERICA SEVERED ITS RELATIONSHIP WITH THE UNITED MINE WORKERS OF AMERICA AND BECAME AN AUTONOMOUS INTERNATIONAL TRADE UNION WITH ITS OWN CONSTITUTION, BY-LAWS AND OFFICERS. IT HAD CERTAIN FRATERNAL AND COOPERATIVE RELATIONSHIPS WITH THE UNITED MINE WORKERS OF AMERICA, BUT IT WAS NO LONGER PART OF THE SAME STRUCTURE, BEING AN INDEPENDENT ORGANIZATION. IT CARRIED ON THE ACTIVITIES OF A TRADE UNION AND HAS BEEN FOUND TO BE A TRADE UNION BY THIS BOARD.
- (3) IN 1964 AT THE REGULAR CONVENTION HELD IN ACCORDANCE WITH THE PROVISIONS OF ITS CONSTITUTION, DISTRICT 50, UNITED MINE WORKERS OF AMERICA, BY AN AMENDMENT TO ITS CONSTITUTION, CHANGED ITS NAME TO "THE INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA". THE EVIDENCE WAS THAT THERE WAS NO CHANGE IN THE SUBSTANCE OF THE ORGANIZATION.
- (4) IN THE MOST RECENT EDITION OF THE CONSTITUTION OF THE APPLICANT, IN WHICH ITS NAME IS DECLARED TO BE THE INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA, THERE ARE A NUMBER OF REFERENCES TO THE ORGANIZATION SIMPLY AS "DISTRICT 50, UNITED MINE WORKERS OF AMERICA". ITS MEMBERSHIP CARDS BEAR THE HEADING "DISTRICT 50, U.M.W.A.". IT IS IN THE LATTER NAME THAT THIS APPLICATION HAS BEEN MADE AND IT WAS BY THAT NAME THAT THE APPLICANT APPEARED ON THE BALLOT IN THE REPRESENTATION VOTE.

4. THE INTERVENER DOES NOT SUGGEST THAT THE FINDINGS BY THE BOARD IN MANY PREVIOUS CASES THAT DISTRICT 50, UNITED MINE WORKERS OF AMERICA (IN SOME CASES UNDER THE NAME DISTRICT 50, U.M.W.A.) WAS A TRADE UNION, WERE IN ERROR. COUNSEL'S ARGUMENT IS SIMPLY THAT SINCE THE AMENDMENT TO THE CONSTITUTION IN 1964 THERE EXISTS NO TRADE UNION BEARING THE NAME OF THE APPLICANT AS IT APPEARS IN THE APPLICATION IN THIS MATTER. ON THE UNCONTRADICTED EVIDENCE, HOWEVER, THERE DOES EXIST A TRADE UNION WHOSE CORRECT AND FULL NAME IS "THE INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA", AND IT IS THIS TRADE UNION WHICH IS IN FACT THE APPLICANT IN THE INSTANT CASE. WHILE THE APPLICANT MAY HAVE USED A NAME DIFFERING SLIGHTLY FROM ITS CORRECT OFFICIAL NAME, THIS FACT DOES NOT OF NECESSITY RENDER THE APPLICATION A NULLITY AND IT CERTAINLY DOES NOT SUPPORT THE CONCLUSION THAT THE APPLICANT DOES NOT EXIST AS A TRADE UNION. IN THE INSTANT CASE, THE APPLICANT HAS APPLIED FOR CERTIFICATION IN THE NAME BY WHICH IT IS FAMILIARLY KNOWN. ON THE UNCONTRADICTED EVIDENCE THIS NAME DESIGNATES A WELL-KNOWN INTERNATIONAL TRADE UNION, ONE OF WHOSE RESPONSIBLE OFFICERS HAS MADE THE DECLARATION IN FORM 8, CONCERNING THE STATUS OF THE APPLICANT, WHICH HAS BEEN FILED IN THIS MATTER. THERE IS NO EVIDENCE THAT ANYONE HAS BEEN MISLED OR THAT

THERE HAS BEEN ANY ATTEMPT TO MISLEAD IN THIS USE OF THE APPLICANT'S FAMILIAR NAME.

5. FOR THE FOREGOING REASONS, THE BOARD MUST REFUSE THE REQUEST OF THE INTERVENER TO REVOKE THE FINDING THAT THE APPLICANT IS A TRADE UNION. ALTHOUGH THE NAME IN WHICH THE APPLICATION HAS BEEN MADE DOES SUFFICIENTLY DESIGNATE THE APPLICANT TRADE UNION, IT HAS BEEN THE BOARD'S USUAL PRACTICE TO AMEND THE NAMES OF PARTIES, SO THAT THEY APPEAR, AS FAR AS POSSIBLE, IN THEIR TECHNICALLY CORRECT NAMES. HAVING REGARD TO THE FACTS AS THEY HAVE BEEN SET OUT, THE BOARD IS OF OPINION THAT A BONA FIDE MISTAKE HAS BEEN MADE WITH THE RESULT THAT THE APPLICANT HAS BEEN INCORRECTLY NAMED. THE NAME OF THE APPLICANT AS IT APPEARS IN THE STYLE OF CAUSE OF THESE PROCEEDINGS IS AMENDED TO READ: "THE INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA".

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DECISION OF BOARD MEMBER G. RUSSELL HARVEY. (MARCH 10, 1966).

I DISSENT.

UNDER CONDITIONS SET OUT IN SECTION 78 THE BOARD IS PERMITTED TO AMEND A STYLE OF CAUSE.

ORAL TESTIMONY WAS TENDERED BY A FORMER OFFICIAL OF THE APPLICANT IN WHICH REASONS WERE GIVEN FOR THE CONTINUED ADVANTAGEOUS USE OF A TITLE OTHER THAN THE CONSTITUTIONAL NAME OF THE APPLICANT.

IN THE CIRCUMSTANCES OF THIS CASE THE REQUISITE CONDITIONS FOR AMENDMENT DO NOT EXIST.

I WOULD DISMISS THE APPLICATION.

11197-65-R: UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS (APPLICANT) V. CAMPBELL SOUP COMPANY LTD. (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND CHARLES BORSK FOR THE APPLICANT, C. A. MORLEY, T. D. WATSON AND A. E. BURT FOR THE RESPONDENT, BENJAMIN LAMB FOR THE OBJECTORS.

DECISION OF THE BOARD: (MARCH 7, 1966).

1. THIS IS AN APPLICATION FOR CERTIFICATION.

2. THE APPLICANT FILED A TOTAL OF 283 MEMBERSHIP DOCUMENTS IN SUPPORT OF ITS APPLICATION OF WHICH 253 CORRESPONDED TO NAMES OF PERSONS INCLUDED IN THE BARGAINING UNIT HEREINAFTER DESCRIBED. THE DOCUMENTARY EVIDENCE OF MEMBERSHIP

INCLUDED 12 COMBINATION APPLICATION CARDS AND RECEIPTS ON WHICH THERE APPEAR TO BE DEFECTS WITH RESPECT TO THE DATE ON WHICH THE DOCUMENT WAS SIGNED AND RECEIPTED. THE MEMBERSHIP DOCUMENTS IN QUESTION WERE ALL SALMON COLOURED APPLICATION CARDS AND RECEIPTS. THE TOP PORTION OF THE CARD BEING THE APPLICATION PORTION CONTAINED A SPACE FOR THE DATE ON WHICH THE CARD WAS SIGNED. THE BOTTOM PORTION OF THE CARD ALSO CONTAINED A SPACE FOR THE INSERTION OF THE DATE ON WHICH THE INITIATION FEE WAS PAID.

3. THE BOARD IS SATISFIED AFTER A CLOSE ANALYSIS OF THE CARDS IN QUESTION THAT THE FOLLOWING ARE IN FACT THE DATES WHICH APPEAR ON THE CARDS.

- CARD No. 1 - APPLICATION PORTION DATED MARCH 23, 1963
RECEIPT PORTION DATED MARCH 23, 1965
- CARD No. 2 - APPLICATION PORTION DATED MAY 18, 1965
RECEIPT PORTION DATED --
- CARD No. 3 - APPLICATION PORTION DATED NOVEMBER 3, 1956
RECEIPT PORTION DATED NOVEMBER 3, 1956
- CARD No. 4 - APPLICATION PORTION DATED OCTOBER 13, 1965
RECEIPT PORTION DATED OCTOBER 13, 1963
- CARD No. 5 - APPLICATION PORTION DATED FEBRUARY 17, 19--
RECEIPT PORTION DATED FEBRUARY - 19--
- CARD No. 6 - APPLICATION PORTION DATED JUNE - 1910
RECEIPT PORTION DATED JUNE 10, 1965
- CARD No. 7 - APPLICATION PORTION DATED FEBRUARY 6, 1965
RECEIPT PORTION DATED FEBRUARY 6, 1963
- CARD No. 8 - APPLICATION PORTION DATED APRIL 24, 19635
RECEIPT PORTION DATED APRIL 24, 1965
- CARD No. 9 - APPLICATION PORTION DATED APRIL 29, 19--
RECEIPT PORTION DATED APRIL 29, 1965
- CARD No. 10 - APPLICATION PORTION DATED MARCH 7, 1965
RECEIPT PORTION DATED MARCH 7, 1963
- CARD No. 11 - APPLICATION PORTION DATED JUNE 12, 1965
RECEIPT PORTION DATED JUNE 12, 1965
- CARD No. 12 - APPLICATION PORTION DATED MAY 6, 1955
RECEIPT PORTION DATED MAY 6, 1965

4. ALL EXCEPT CARD No. 12 WERE SIGNED BY E. HAWTHORN AS COLLECTOR.

5. MR. CHARLES BORSK TESTIFIED THAT HE HAD COMPLETED FORM 9 THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS AND HE HAD BASED HIS INFORMATION CONCERNING THE COLLECTORS ON EITHER PERSONAL KNOWLEDGE GAINED FROM THE FACT THAT HE HAD ACTED

AS COLLECTOR WITH RESPECT TO CERTAIN CARDS OR HAD MADE INQUIRIES OF THE PERSONS WHO HAD ACTED AS COLLECTORS. HE ALSO TESTIFIED THAT HE DIRECTED THE APPLICANT'S CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES AND THAT THE CAMPAIGN HAD COMMENCED AND THE FIRST CARD WAS SIGNED ON JANUARY 15, 1965 AND THE LAST CARD WAS SIGNED ON DECEMBER 28, 1965 WHICH WAS THE TERMINAL DATE OF THIS APPLICATION. MR. BORSK FURTHER TESTIFIED THAT WHILE THE APPLICANT HAS PREVIOUSLY ATTEMPTED TO ORGANIZE THE EMPLOYEES OF THE RESPONDENT ON TWO OTHER OCCASIONS, AT THE TIME OF THE FIRST ATTEMPT IN 1959 THE APPLICANT HAD IN USE AT THAT TIME A YELLOW MEMBERSHIP CARD. AT THE TIME OF THE APPLICANT'S SECOND ATTEMPT TO ORGANIZE THE RESPONDENT IN 1963 THE APPLICANT AT THAT TIME WAS USING A BLUE MEMBERSHIP CARD.

6. MR. BORSK TESTIFIED THAT THE SALMON CARDS IN USE DURING THE CURRENT CAMPAIGN WERE PRINTED DURING THE LATTER PART OF 1964, AND THAT THE APPLICANT HAD NEVER PREVIOUSLY USED THIS COLOUR OF MEMBERSHIP CARD. MR. BORSK TESTIFIED THAT ANY CARD BEARING A DATE 1963 OR EARLIER WOULD OF NECESSITY HAVE TO BE IN ERROR BECAUSE OF THE FACT THAT THE CARDS WERE NOT IN EXISTENCE AT THAT TIME.

7. MR. HAWTHORN WHO HAD SIGNED ALL BUT ONE OF THE DEFECTIVE CARDS TESTIFIED THAT ALL OF THE CARDS HE HAD SIGNED AS COLLECTOR WERE IN FACT SIGNED BY THE MEMBERS DURING THE YEAR 1965 AND THAT NONE OF THE CARDS ON WHICH HE ACTED AS COLLECTOR HAD BEEN SIGNED PRIOR TO THAT DATE. MR. HAWTHORN FURTHER TESTIFIED THAT HE WAS PRESENT WHEN THE COLLECTOR ON CARD No. 12 SIGNED UP THAT MEMBER AND THAT CARD WAS ALSO SIGNED DURING THE YEAR 1965. MR. HAWTHORN TESTIFIED THAT HE HAD NOT PARTICIPATED IN ANY PRIOR CAMPAIGN CONDUCTED BY THE APPLICANT AND HAD NEVER PREVIOUSLY ASSISTED THE APPLICANT IN SIGNING UP MEMBERS.

8. BECAUSE OF APPARENT DISCREPANCIES BETWEEN THE SIGNATURES ON SOME OF THE MEMBERSHIP DOCUMENTS AND THE SPECIMEN SIGNATURES PROVIDED BY THE RESPONDENT, THE BOARD CAUSED ONE OF ITS OFFICIALS TO PERSONALLY INTERVIEW SOME 15 PERSONS ON WHOSE BEHALF THE APPLICANT HAD SUBMITTED MEMBERSHIP DOCUMENTS TO VERIFY THAT THE SIGNATURES APPEARING ON THE APPLICATION CARDS WERE IN FACT SIGNED BY THESE PERSONS. CARD No. 8 REFERRED TO ABOVE WAS ONE OF THE CARDS WHICH WAS CHECKED BY THE BOARD'S OFFICER IN THIS MANNER AND THAT PERSON ADVISED THE BOARD'S OFFICER THAT THE SIGNATURE ON THE CARD WAS HIS SIGNATURE AND THAT HE DID IN FACT SIGN THE CARD ON APRIL 24, 1965.

9. THE RESPONDENT AND THE OBJECTORS ARGUED THAT THE BOARD SHOULD NOT CONSIDER THE ORAL TESTIMONY OF THE APPLICANT'S WITNESSES AND THAT THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SHOULD BE EVALUATED ON ITS FACE AND ANY EXTRINSIC EVIDENCE SHOULD BE TREATED AS INADMISSABLE.

10. IT IS TO BE NOTED THAT THERE IS NO CHALLENGE TO THE MEMBERSHIP OF THE PERSONS ON WHOSE BEHALF THE DOCUMENTARY EVIDENCE OF MEMBERSHIP HAS BEEN SUBMITTED BUT ONLY THE TIME THAT THESE PERSONS JOINED THE APPLICANT IS SUBJECT TO QUESTION BECAUSE OF THE DEFECTS APPEARING ON THE MEMBERSHIP CARDS.

11. IT IS THE BOARD'S ESTABLISHED PRACTICE THAT AN APPLICANT SEEKING CERTIFICATION WITHOUT A VOTE MUST SUBMIT DOCUMENTARY EVIDENCE OF MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE EMPLOYER AND SUCH DOCUMENTARY EVIDENCE MUST BE DATED WITHIN SIX MONTHS OF THE DATE THE APPLICATION IS MADE. HOWEVER, WHERE AN APPLICANT SEEKS A REPRESENTATION VOTE THE APPLICANT MUST SUBMIT DOCUMENTARY EVIDENCE OF MEMBERSHIP ON BEHALF OF NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT

IN THE BARGAINING UNIT AND SUCH DOCUMENTARY EVIDENCE OF MEMBERSHIP MUST BE DATED WITHIN ONE YEAR OF THE DATE THE APPLICATION WAS MADE.

12. IN THIS CASE THE APPLICANT IS SEEKING A REPRESENTATION VOTE AND HAS SUBMITTED DOCUMENTARY EVIDENCE OF MEMBERSHIP IN SUPPORT OF NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. HOWEVER, BECAUSE OF DISCREPANCIES APPEARING ON THE FACE OF THE DOCUMENTARY EVIDENCE OF MEMBERSHIP DOUBT IS CAST ON THE TIME WHEN SOME OF THE DOCUMENTS WERE SIGNED AND THERE ARE SUFFICIENT DOCUMENTS CALLED INTO QUESTION THAT IF THE BOARD WERE TO FIND THE QUESTIONED DOCUMENTS WERE SIGNED MORE THAN ONE YEAR PRIOR TO THE DATE THE APPLICATION WAS MADE, THE BOARD WOULD NOT BE ABLE TO FIND THAT "NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE".

13. SECTION 50 OF THE BOARD'S RULES OF PROCEDURE READS AS FOLLOWS:

"50. (1) EVIDENCE OF MEMBERSHIP IN A TRADE UNION OR OF OBJECTION BY EMPLOYEES TO CERTIFICATION OF A TRADE UNION OR OF SIGNIFICATION BY EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION SHALL NOT BE ACCEPTED BY THE BOARD ON AN APPLICATION FOR CERTIFICATION OR FOR A DECLARATION TERMINATING BARGAINING RIGHTS UNLESS THE EVIDENCE IS IN WRITING, SIGNED BY THE EMPLOYEE OR EACH MEMBER OF A GROUP OF EMPLOYEES, AS THE CASE MAY BE, AND,

(A) IS ACCOMPANIED BY A RETURN MAILING ADDRESS AND THE NAME OF THE EMPLOYER; AND

(B) IS FILED NOT LATER THAN THE TERMINAL DATE FOR THE APPLICATION.

(2) NO ORAL EVIDENCE OF MEMBERSHIP IN A TRADE UNION OR OF OBJECTION BY EMPLOYEES TO CERTIFICATION OF A TRADE UNION OR OF SIGNIFICATION BY EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION SHALL BE ACCEPTED BY THE BOARD EXCEPT TO IDENTIFY AND SUBSTANTIATE THE WRITTEN EVIDENCE REFERRED TO IN SUBSECTION 1."

14. IN THIS CASE THE PROVISIONS OF SUBSECTION 1 OF SECTION 50 WITH RESPECT TO THE FILING OF THE DOCUMENTARY EVIDENCE OF MEMBERSHIP HAS BEEN COMPLIED WITH. THE QUESTION REMAINS AS TO WHETHER OR NOT THE ORAL EVIDENCE HEARD BY THE BOARD IN THIS CASE CONCERNING THE DOCUMENTARY EVIDENCE OF MEMBERSHIP FALLS WITHIN THE EXCEPTION PROVIDED BY SECTION 50 (2). SINCE THE ORAL EVIDENCE HEARD BY THE BOARD DID NOT DEAL WITH THE FACT THAT THE MEMBERS JOINED THE APPLICANT UNION BUT RATHER WAS CONCERNED WITH THE TIME AT WHICH SUCH PERSONS JOINED THE UNION, THE BOARD FINDS THAT SUCH ORAL EVIDENCE IDENTIFIES AND SUBSTANTIATES THE WRITTEN EVIDENCE AND ACCORDINGLY FALLS WITHIN THE EXCEPTION PROVIDED BY SECTION 50 (2) OF THE BOARD'S RULES OF PROCEDURE AND IS ACCORDINGLY ADMISSABLE.

15. HAVING REGARD TO ALL THE EVIDENCE AND IN THE ABSENCE OF ANY EVIDENCE FROM WHICH WE COULD INFER THAT THE APPLICANT ATTEMPTED TO MISLEAD THE BOARD, THE BOARD FINDS THAT ALL THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN THIS CASE WAS SIGNED WITHIN THE PERIOD OF ONE YEAR PRIOR TO THE DATE OF THE MAKING OF THIS APPLICATION. THE BOARD FURTHER FINDS THAT THE ERRORS IN DATES WHICH APPEARED ON THE CARDS IN QUESTION WERE BONA FIDE MISTAKES CAUSED BY HUMAN ERROR.
16. BEFORE LEAVING THIS MATTER, HOWEVER, THE BOARD CANNOT REFRAIN FROM COMMENTING UPON THE FACT THAT THE MEMBERSHIP DOCUMENTS IN QUESTION APPEARED TO BE SLOPPILY PREPARED AND WERE NOT ADEQUATELY CHECKED PRIOR TO BEING FILED BY THE APPLICANT. THE DELAY IN THE DETERMINATION OF THIS MATTER BY THE BOARD WAS OCCASIONED BY THE LACK OF CARE ON THE PART OF THE APPLICANT AND IF THE APPLICANT SUFFERS AS A RESULT OF THIS DELAY IT HAS BEEN THE AUTHOR OF ITS OWN MISFORTUNE.
17. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.
18. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS NEW TORONTO PLANT, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, SECURITY GUARDS, LABORATORY, INSPECTION, TIME, OFFICE AND SALES STAFF AND STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
19. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
20. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.
21. THE BOARD DIRECTS THAT SAMUEL GLEASON, SAMUEL GRAY, CECIL LAWN, JOHN LONG, BERESFORD MARSHALL AND ETHEL SCOTT, PERSONS CLASSIFIED BY THE RESPONDENT AS "CLERK WAREHOUSING", BE PERMITTED TO VOTE AND THAT THEIR BALLOTS BE SEGREGATED AND NOT COUNTED PENDING A RULING BY THE BOARD AS TO THEIR ELIGIBILITY FOR INCLUSION IN THE BARGAINING UNIT.
22. MR. F. D. EDWARDS, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF SAMUEL GLEASON, SAMUEL GRAY, CECIL LAWN, JOHN LONG, BERESFORD MARSHALL AND ETHEL SCOTT.
23. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.
24. THE MATTER IS REFERRED TO THE REGISTRAR.

11232-65-R: BASIC STRUCTURE STEEL FABRICATORS EMPLOYEES ASSOCIATION
(APPLICANT) v. BASIC STRUCTURE STEEL FABRICATORS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY
AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: GLYNN A. GREEN, Q.C., CORNELIS VAN KRALINGEN AND
ALLAIN BOISVERT FOR THE APPLICANT, NO ONE FOR THE RESPONDENT.

DECISION OF THE BOARD: (MARCH 2, 1966).

1. THIS IS AN APPLICATION FOR CERTIFICATION MADE ON DECEMBER 28TH, 1965, IN
WHICH THE APPLICANT REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

2. SINCE THE APPLICANT HAD NEVER HAD ITS STATUS AS A TRADE UNION FORMALLY
RECOGNIZED BY THE BOARD, THE BOARD, PURSUANT TO ITS USUAL PRACTICE, DIRECTED THAT
THE BALLOT BOX BE SEALED AND THAT THE REGISTRAR LIST THIS MATTER FOR HEARING
FOLLOWING THE TAKING OF THE VOTE IN ORDER THAT THE APPLICANT BE GIVEN AN
OPPORTUNITY TO ADDUCE EVIDENCE CONCERNING THE MANNER IN WHICH THE APPLICANT CAME
INTO EXISTENCE. THE APPLICANT WAS ALSO REQUIRED TO FILE WITH THE BOARD, ITS
CONSTITUTION AND BY-LAWS OR ANY OTHER DOCUMENTS WHICH WOULD EVIDENCE ITS EXISTENCE
AS A TRADE UNION.

3. THE APPLICANT FILED IN THIS MATTER ITS MINUTE BOOK WHICH DISCLOSES THAT THE
APPLICANT HELD ITS FIRST MEETING ON SEPTEMBER 22ND, 1965, AT WHICH MEMBERS OF THE
APPLICANT ELECTED A PRESIDENT, SECRETARY-TREASURER AND THREE STEWARDS AS OFFICERS
OF THE APPLICANT. A FURTHER MEETING WAS HELD ON OCTOBER 7TH, 1965, AT WHICH THERE
WAS HELD A GENERAL DISCUSSION OF A "PENDING CONTRACT".

4. IT APPEARED FROM THE EVIDENCE THAT EMPLOYEES OF THE RESPONDENT HAD CARRIED ON
CERTAIN ACTIVITIES UNDER THE SAME NAME AS THAT WHICH THE APPLICANT NOW HAS, PRIOR
TO THE APPLICANT COMING INTO FORMAL EXISTENCE AND EVEN PARTICIPATED IN OTHER
PROCEEDINGS BEFORE THE BOARD UNDER THAT NAME. THE APPLICANT DID NOT COME INTO
FORMAL EXISTENCE UNTIL NOVEMBER 17TH, 1965, AT WHICH TIME A MEETING OF THE EMPLOYEES
OF THE RESPONDENT WAS HELD AND A CONSTITUTION WAS ADOPTED. THE ELECTION OF OFFICERS
HELD ON SEPTEMBER 22ND, 1965, WAS NOT CONFIRMED OR RATIFIED BY THE APPLICANT'S
MEMBERS AFTER THE CONSTITUTION WAS ADOPTED, HOWEVER, A VICE-PRESIDENT WAS
"APPOINTED" AT THE MEETING HELD ON NOVEMBER 17TH, 1965.

5. THE APPLICANT'S CONSTITUTION PROVIDES, AMONG OTHER THINGS, FOR THE ELECTION
OF OFFICERS AND DEFINES THEIR DUTIES. THE CONSTITUTION ALSO CONTAINS THE
FOLLOWING CLAUSES.

"ALL EMPLOYEES ELIGIBLE TO BE WITHIN A COLLECTIVE BARGAINING
UNIT SHALL BE MEMBERS OF THE ASSOCIATION AND SHALL PAY THE
REGULAR MONTHLY DUES THEREOF AS DETERMINED BY THE
ASSOCIATION FROM TIME TO TIME."

"ALL ASSOCIATION DUES SHALL BE DEDUCTED FROM THE LAST PAY
OF EACH MEMBER IN THE MONTH AND PAID OVER TO THE ASSOCIATION
ON THE 1ST DAY OF THE NEXT MONTH."

6. THE CONSTITUTION, HOWEVER, CONTAINS NO "OBJECTS" CLAUSE WHICH SETS OUT THE
PURPOSE OR OBJECTS OF THE ASSOCIATION.

7. IT APPEARS FROM THE EVIDENCE THAT THE UNITED STEELWORKERS OF AMERICA HAD ATTEMPTED TO ORGANIZE THE RESPONDENT'S EMPLOYEES. THE APPLICANT'S PRESIDENT TESTIFIED HE WAS INFORMED OF THIS FACT BY AN OFFICER OF THE RESPONDENT WHO ADVISED HIM THAT THE RESPONDENT WOULD DEAL WITH THE UNITED STEELWORKERS OF AMERICA OR A SHOP UNION WHICHEVER THE EMPLOYEES WANTED.

8. THE APPLICANT'S WITNESS FURTHER TESTIFIED THAT MEETINGS HELD BY THE EMPLOYEES AT WHICH THE OFFICERS OF THE APPLICANT WERE ELECTED AND THE CONSTITUTION WAS ADOPTED WERE HELD ON COMPANY PREMISES AFTER WORKING HOURS. PERMISSION TO HOLD SUCH MEETINGS WAS OBTAINED FROM MANAGEMENT AND MANAGEMENT WAS ADVISED OF THE PURPOSE OF THESE MEETINGS.

9. THE APPLICANT'S WITNESS FURTHER TESTIFIED THAT PRIOR TO MAKING THIS APPLICATION, THE APPLICANT PRESENTED TO THE RESPONDENT ITS PROPOSALS FOR A COLLECTIVE AGREEMENT. IT WOULD APPEAR FROM THE MINUTE BOOK THAT THE "PENDING CONTRACT" WAS DISCUSSED BY THE MEMBERS ON OCTOBER 7TH, 1965. WHILE THE RESPONDENT AGREED TO CERTAIN CONDITIONS, INCLUDING THE PROVISIONS FOR DUES DEDUCTIONS AS SET OUT IN THE CONSTITUTION, THERE WERE CERTAIN ITEMS WHICH STILL HAD TO BE NEGOTIATED.

10. THE BOARD IS OF OPINION THAT THE CLAUSES CONTAINED IN THE CONSTITUTION WITH RESPECT TO MEMBERSHIP AND DUES DEDUCTIONS, IN THE FORM IN WHICH THEY APPEAR, ARE MORE APPROPRIATE FOR INCLUSION IN A COLLECTIVE AGREEMENT THAN IN A CONSTITUTION OF A TRADE UNION.

11. HAVING REGARD TO THE FACT THAT THE EMPLOYEES RECEIVED PERMISSION TO USE THE RESPONDENT'S PREMISES TO CONDUCT MEETINGS FOR THE PURPOSE OF FORMING THE APPLICANT ASSOCIATION WITH THE KNOWLEDGE AND CONSENT OF THE RESPONDENT, THE FACT THAT THE EMPLOYEES WERE ADVISED BY AN OFFICER OF THE RESPONDENT THAT THE RESPONDENT WOULD RECOGNIZE AND EMPLOYEE ASSOCIATION AS A TRADE UNION TO REPRESENT THE RESPONDENT'S EMPLOYEES AND AGREED TO CERTAIN PROVISIONS IN A PROPOSED COLLECTIVE AGREEMENT, THE BOARD FINDS IN ALL THE CIRCUMSTANCES OF THIS CASE, THAT SUCH ACTIONS CONSTITUTE PARTICIPATION BY THE RESPONDENT IN THE FORMATION OF THE APPLICANT AND AMOUNT TO A CONTRIBUTION OF FINANCIAL OR OTHER SUPPORT TO THE APPLICANT WITHIN THE MEANING OF SECTION 10 OF THE LABOUR RELATIONS ACT.

12. THE BOARD THEREFORE FINDS THAT THE APPLICANT IS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT WHICH THE BOARD CAN CERTIFY.

13. THIS APPLICATION IS THEREFORE DISMISSED.

14. THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN THIS CASE CONSISTED OF A "ROUND ROBIN" APPLICATION FORM BEARING THE INSCRIPTION

"WE, THE UNDERSIGNED EMPLOYEES OF BASIC STRUCTURE STEEL FABRICATORS LTD., HEREBY APPLY FOR MEMBERSHIP IN THE EMPLOYEES ASSOCIATION OF THE ABOVE MENTIONED FIRM AND ACKNOWLEDGE PAYMENT OF THE SUM OF \$1.50 AS MEMBERSHIP FEE."

THIS STATEMENT IS THEN FOLLOWED BY THE SIGNATURES OF CERTAIN EMPLOYEES. AFTER THE SIGNATURES OF THE EMPLOYEES THERE APPEARS THE FOLLOWING STATEMENT OVER THE

SIGNATURE OF THE SECRETARY-TREASURER OF THE APPLICANT.

"I CERTIFY THIS DOCUMENT TO BE A TRUE ORIGINAL FROM
THE ORIGINAL MINUTE BOOK OF BASIC STRUCTURE STEEL
FABRICATORS EMPLOYEES ASSOCIATION."

THE APPLICANT ALSO FILED RECEIPTS SIGNED BY THE SECRETARY-TREASURER, HOWEVER,
THE PERSONS TO WHOM THE RECEIPTS WERE MADE OUT DID NOT COUNTERSIGN THE RECEIPTS.

15. HAVING REGARD TO THE RESULT HOWEVER, THE BOARD WILL NOT DEAL WITH THE
MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT, OTHER THAN TO COMMENT THAT SUCH
MEMBERSHIP EVIDENCE IS NOT IN THE FORM OF DOCUMENTARY EVIDENCE WHICH IS USUALLY
ACCEPTED BY THE BOARD.

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11299-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA,
LOCAL 264 (APPLICANT) v. QUEENS BAKERY (RESPONDENT) AND GROUP OF EMPLOYEES
(OBJECTORS).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND
D. McDERMOTT.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., NEIL GROCUIT AND DOMENIC RICOI
FOR THE APPLICANT, WARREN K. WINKLER FOR THE RESPONDENT, AND CARL ORBACH FOR A
GROUP OF EMPLOYEES.

DECISION OF RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN:
(MARCH 15, 1966).

1. THIS IS AN APPLICATION FOR CERTIFICATION.
2. THERE WERE FOUR INDIVIDUAL PETITIONS FILED IN OPPOSITION TO THE APPLICATION.
THE BOARD HEARD EVIDENCE FROM EACH OF THE PETITIONERS.
3. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS THAT THE PETITION OF
VINCENZA CONTAVALLE CONSTITUTES A VOLUNTARY EXPRESSION OF DESIRE TO RENOUNCE THE
UNION AND THAT IT IS FREE OF MANAGEMENT INFLUENCE OR INTERFERENCE.
4. THIS FINDING MAKES IT UNNECESSARY FOR THE BOARD TO DEAL WITH THE REMAINING
THREE PETITIONS, SINCE THE COUNT INDICATES THAT THE APPLICANT HAS FILED NINE
CARDS THAT STAND UP IN A BARGAINING UNIT OF SIXTEEN.
5. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF
SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.
6. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN
TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN AND FORELADIES, PERSONS ABOVE THE
RANK OF SUPERVISOR, FOREMAN OR FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES
CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK,
CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE
BARGAINING.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

8. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER D. McDERMOTT: (MARCH 15, 1966).

I CANNOT AGREE WITH THE DECISION OF THE MAJORITY IN THIS MATTER. MY COLLEAGUES HAVE CONSIDERED ONE PETITION OUT OF THE FOUR SUBMITTED, DECIDED THAT IT IS FREE OF CONTAMINATION, AND IN EFFECT HAVE USED IT AS A MEANS OF EXONERATING THE SHORTCOMINGS OF THE OTHER THREE.

OSTENSIBLY AT LEAST THERE WERE FOUR SEPARATE PETITIONS FILED. THAT IS TO SAY, THERE WERE FOUR SEPARATE PIECES OF PAPER, EACH WITH A SEPARATE SIGNATORY. HOWEVER, THE STATEMENTS WERE UNIFORM IN CHARACTER, ALL ORIGINATED FROM THE SAME HAND, ALL WERE CIRCULATED BY THE SAME PRIME MOVER. AS A RESULT, IN MY RESPECTFUL OPINION, THEY WERE ALL PART AND PARCEL OF ONE COLLECTIVE ACTION, AND SHOULD BE CONSIDERED IN FACT AS ONE.

THE PETITION OF VINCENZA CONTAVALLE CANNOT BE CONSIDERED AS AN INDEPENDENT ACTION. IT WAS AN INTEGRAL PART OF THE OVERALL ACTION SPONSORED AND MOVED BY MR. PONZO.

I CHOOSE TO BELIEVE THE TESTIMONY OF MISS CONTAVALLE, AND HER ALONE. IT IS APPARENT TO ME THAT SHE WAS A PASSIVE SIGNATORY, HAD NO REAL INTEREST IN THE MATTER, AND DID NOT KNOW THE TRUE INTENT OF THE PETITION OR ITS FINAL PURPOSE AND DESTINATION. THIS IN ITSELF OF COURSE MAY NOT BE FATAL. BUT NEVERTHELESS SHE ACTED IN CONCERT WITH THE OTHERS, WITTINGLY, OR UNWITTINGLY. THEREFORE SHE JOINS WITH THEM, AND STANDS, OR FALLS, WITH THEM, AS THE CASE MAY BE.

THE MOVING SPIRIT IN THIS WHOLE MATTER IS PONZO. THE EVIDENCE OF ALL OF THE OTHER PETITIONERS CONTRADICTS, AND CONFLICTS WITH HIS. THEN THEY PROCEED TO CONFLICT WITH EACH OTHER. INDEED THIS WHOLE MATTER IS SO RIDDLED WITH CONTRADICTIONS AND CONFLICTING EVIDENCE THAT I AM FORCED TO THE CONCLUSION THAT NO ONE EXCEPT MISS CONTAVALLE EVEN ATTEMPTED TO TELL THE TRUTH. THERE IS CONFLICTING EVIDENCE ON SEEMINGLY IRRELEVANT MATTERS, SUCH AS THE METHOD OF TRANSPORTATION USED TO GET TO THE LAWYERS OFFICE. IF PEOPLE ARE UNWILLING TO TELL THE TRUTH WITH REGARD TO SUCH AN UNIMPORTANT ITEM THEN HOW CAN THEIR ANSWERS IN REPLY TO IMPORTANT AND RELEVANT QUESTIONS BE BELIEVED?

THERE IS AN ONUS ON PETITIONERS TO SATISFY THIS BOARD THAT THEIR ACTIONS ARE CLEAN AND UNHAMPERED. I AM NOT SATISFIED THAT SUCH IS THE CASE HERE. IN MANY CERTIFICATION APPLICATIONS ONE CONTAMINATED CARD IS SUFFICIENT TO CAST DOUBT ON THE WHOLE. THE PREPONDERANCE OF CONFLICTING EVIDENCE HERE, IN MY OPINION RAISES SERIOUS DOUBTS. AS A RESULT I WOULD HAVE DISMISSED THE PETITIONS AND CERTIFIED THE APPLICANT UNION.

11369-65-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. NEW SURPASS PETROCHEMICALS LIMITED (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: J. SULLIVAN FOR THE APPLICANT, J. D. HILTON, F. EVANS AND K. EASTMAN FOR THE RESPONDENT, J. LAVICTOIRE AND S. MONTGOMERY FOR A GROUP OF EMPLOYEES.

DECISION OF J. H. BROWN, DEPUTY VICE-CHAIRMAN AND BOARD MEMBER E. BOYER: (MARCH 1, 1966).

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.
2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT.
3. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT LABORATORY PERSONNEL ARE NOT INCLUDED IN THE BARGAINING UNIT.
4. JEAN LAVICTOIRE AND STUART MONTGOMERY, BOTH OF WHOM ARE EMPLOYEES OF THE RESPONDENT, GAVE EVIDENCE IN SUPPORT OF A DOCUMENT (HEREINAFTER REFERRED TO AS THE PETITION) SUBMITTED TO THE BOARD WHICH IS INDICATIVE OF OPPOSITION OF SOME OF THE EMPLOYEES OF THE RESPONDENT TO THIS APPLICATION. THE PETITION READS AS FOLLOWS:

WE THE UNDERSIGNED EMPLOYEE OF NEW SURPASS PETROCHEMICAL 36 UPTON ROAD, AFTER FURTHER CONSIDERATION HAVE DECIDED NOT TO HAVE THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 REPRESENT US IN FORMING A UNION.

WE HAVE DECIDED INSTEAD OF FORMING A SHOP COMMITTEE TO LOOK AFTER OUR INTEREST.

BOTH LAVICTOIRE AND MONTGOMERY TESTIFIED THAT THE PETITION WAS PREPARED AND ALL THE SIGNATURES WERE SECURED ON IT IN THE LUNCH ROOM OF THE RESPONDENT ON THE MORNING OF FEBRUARY 10TH JUST PRIOR TO THE COMMENCEMENT OF THE 8:00 A.M. SHIFT. NO MEMBERS OF MANAGEMENT WERE PRESENT WHEN THE PETITION WAS PREPARED AND CIRCULATED.

5. LAVICTOIRE AND MONTGOMERY ALSO TESTIFIED THAT AFTER THE NOTICE TO THE EMPLOYEES OF THE APPLICATION FOR CERTIFICATION (FORM 5) WAS POSTED KENNETH EASTMAN THE GENERAL SUPERINTENDENT OF THE RESPONDENT COMPANY NOTIFIED THEM THAT THERE WOULD BE A MEETING OF THE EMPLOYEES IN HIS OFFICE AT 4:00 P.M. ON THAT DAY. THE MEETING WAS ATTENDED BY EASTMAN, FRED EVANS, THE PRESIDENT OF THE COMPANY, AND ALL OF THE EMPLOYEES. ACCORDING TO THE EVIDENCE OF LAVICTOIRE THE MEETING LASTED CLOSE TO AN HOUR. MONTGOMERY TESTIFIED THAT EVANS OPENED THE MEETING BY SAYING THAT HE HAD RECEIVED THE UNION'S CERTIFICATION APPLICATION AND THAT AS FAR AS HE WAS CONCERNED IF THE EMPLOYEES WANTED A UNION THEY COULD HAVE ONE. HE THEN PROCEEDED, HOWEVER, TO ASK THE EMPLOYEES WHY THEY WANTED THE UNION. IT APPEARS THAT SOME GENERAL CONVERSATION ENSUED BETWEEN EVANS AND THE EMPLOYEES CONCERNING WORKING CONDITIONS. DURING THE COURSE OF THE CONVERSATION, IN REPLY TO A DIRECT QUESTION BY MONTGOMERY, EVANS TOLD THE EMPLOYEES THAT IF THE UNION WAS NOT SUCCESSFUL IN ITS APPLICATION THE COMPANY WOULD BE PREPARED TO DEAL WITH A SHOP COMMITTEE OF THE EMPLOYEES.

6. WHILE EVANS AT THE OUTSET OF THE MEETING TOLD THE EMPLOYEES THAT AS FAR AS HE WAS CONCERNED THEY COULD HAVE A UNION IF THEY WANTED ONE, IN THE LIGHT OF ALL THE EVIDENCE RELATING TO THE MEETING IT IS APPARENT THAT EVANS CONVEYED HIS DISAPPROVAL OF THE UNION TO THE EMPLOYEES. FURTHER, WHETHER OR NOT EVANS HELD THE MEETING WITH HIS EMPLOYEES FOR THE EXPRESS PURPOSE OF INFLUENCING THEM AGAINST THE UNION, WE ARE IMPELLED TO CONCLUDE THAT EVANS BY HIS REMARKS AND PARTICULARLY HIS PROMISE TO DEAL WITH A SHOP COMMITTEE OF THE EMPLOYEES, WHICH SIGNIFICANTLY IS REFERRED TO IN THE WORDING OF THE PETITION ITSELF, SO INFLUENCED THE EMPLOYEES THAT HE WAS, IN REALITY, THE INSTIGATOR OF THE PETITION. IN REACHING THIS CONCLUSION THE BOARD IS NOT UNMINDFUL OF THE RESPONSIVE NATURE OF THE RELATIONSHIP OF EMPLOYEE AND THEIR EMPLOYER AND THE VULNERABILITY OF EMPLOYEES TO BEING INFLUENCED BY THE WISHES OF THEIR EMPLOYER. THESE CONSIDERATIONS HAVE BEEN RECOGNIZED BY THE BOARD PREVIOUS DECISIONS (SEE PIGOTT MOTORS (1961) LIMITED CASE, CCH CANADIAN LABOUR LAW REPORTER VOL. 1, ¶16,264, C.L.S. 76-530; CENTRAL SUPERMARKETS LIMITED CASE, (1962) CCH CANADIAN LABOUR LAW REPORTER Vo. 1, ¶16,245, C.L.S. 76-865; PARNELL VENDING LIMITED CASE, O.L.R.B. MONTHLY REPORT, APRIL 1965, P. 5). ACCORDINGLY, HAVING REGARD TO ALL THE CIRCUMSTANCES SURROUNDING ITS ORIGINATION, WE ARE NOT PREPARED TO ACCEPT THE PETITION AS REPRESENTING A TRUE EXPRESSION OF THE WISHES OF THE EMPLOYEES WHO SIGNED IT.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN: (MARCH 1, 1966).

I DISSENT.

I WOULD HAVE GIVEN WEIGHT TO THE PETITION AND DIRECTED A REPRESENTATION VOTE. THE EMPLOYEES WOULD BE ASKED IF THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT UNION.

11377-65-R: LOCAL UNION 2163 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. THE WARNOCK HERSEY COMPANY LTD. (RESPONDENT).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: G. PETTA, K. ROSE AND M. BLANCHARD FOR THE APPLICANT, S. G. FISHER FOR THE RESPONDENT.

DECISION OF THE BOARD: (MARCH 4, 1966).

1. THE NAME "WARNOCK-HERSEY COMPANY LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "THE WARNOCK HERSEY COMPANY LTD."
2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.
3. THE RESPONDENT IS ENGAGED IN THE BUSINESS OF TESTING THE QUALITY OF MATERIALS FOR MANUFACTURERS AND USERS WHO RETAIN ITS SERVICES. IN ADDITION TO RADIOGRAPHERS THE RESPONDENT EMPLOYS SHOP INSPECTORS, FIELD INSPECTORS AND TECHNICIANS. ALL OF THE EMPLOYEES DO SOME FORM OF TESTING AND ARE DEPARTMENTALIZED ACCORDING TO THEIR PARTICULAR SKILLS. MORE SPECIFICALLY, THE RESPONDENT AMONG OTHERS HAS A CONCRETE, CHEMICAL, PHYSICAL, SOILS, AND NON-DESTRUCTIVE DEPARTMENT. ALL OF THE RADIOGRAPHERS AND RADIOGRAPHERS-IN-TRAINING ARE EMPLOYED IN THE LATTER DEPARTMENT. THE RESPONDENT HAS FORTY-TWO EMPLOYEES WHO WORK AT AND OUT OF METROPOLITAN TORONTO WHICH NUMBER INCLUDE FIVE RADIOGRAPHERS AND RADIOGRAPHERS-IN-TRAINING. THE RESPONDENT ALSO HAS TWELVE EMPLOYEES WORKING AT AND OUT OF PREMISES IN HAMILTON WHICH INCLUDE THREE RADIOGRAPHERS AND RADIOGRAPHERS-IN-TRAINING. IN ADDITION, THE RESPONDENT HAS A SMALL NUMBER OF EMPLOYEES IN WINDSOR, SAULT STE. MARIE AND PETERBOROUGH, NONE OF WHOM ARE RADIOGRAPHERS OR RADIOGRAPHERS-IN-TRAINING. THERE IS SOME TEMPORARY INTERCHANGE OF EMPLOYEES, PARTICULARLY BETWEEN THE HAMILTON AND TORONTO OPERATIONS OF THE RESPONDENT DEPENDING ON THE TESTING SKILLS REQUIRED FOR ANY PARTICULAR JOB.
4. THE APPLICANT IS APPLYING FOR A UNIT OF EMPLOYEES OF THE RESPONDENT CONSISTING OF RADIOGRAPHERS AND RADIOGRAPHERS-IN-TRAINING WHICH IT CLAIMS IS AN APPROPRIATE CRAFT UNIT. THE RESPONDENT SUBMITS THAT AN "ALL EMPLOYEE" UNIT WITH THE EXCEPTION OF SUPERVISORS AND OFFICE STAFF IS THE APPROPRIATE UNIT IN THE INSTANT APPLICATION.
5. IN ORDER TO ESTABLISH AN ENTITLEMENT TO THE UNIT WHICH IT PROPOSES THE APPLICANT MUST COMPLY WITH THE PROVISIONS OF SECTION 6 (2) OF THE ACT. MORE PARTICULARLY, THE APPLICANT MUST SATISFY THE BOARD: (1) THAT THE GROUP OF EMPLOYEES EXERCISE TECHNICAL SKILLS OR ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM OTHER EMPLOYEES, (2) THAT THEY COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT, AND (3) THAT THE APPLICATION IS MADE BY A UNION PERTAINING TO SUCH SKILLS OR CRAFT. WHILE THE EVIDENCE LENDS SUPPORT TO A FINDING THAT RADIOGRAPHERS EXERCISE TECHNICAL SKILLS BY REASON OF WHICH ARE DISTINGUISHABLE FROM OTHER EMPLOYEES THERE IS NO EVIDENCE OF ANY HISTORY OF RADIOGRAPHERS BARGAINING SEPARATELY AND APART FROM OTHER EMPLOYEES EITHER IN THIS

JURISDICTION OR IN ANY OTHER JURISDICTION. FURTHER, THE APPLICANT ADMITS THAT IT IS NOT A TRADE UNION WHICH HAS EVER BARGAINED EXCLUSIVELY FOR A UNIT OF RADIO-GRAPHERS AND RADIOGRAPHERS-IN-TRAINING. THE APPLICANT, ACCORDINGLY, HAS FAILED TO BRING ITSELF WITHIN THE PROVISIONS OF SECTION 6 (2) OF THE ACT. THE BOARD THEREFORE IS NOT PREPARED TO GRANT THE "CRAFT" UNIT WHICH THE APPLICANT IS SEEKING. WE WOULD MENTION FURTHER THAT THERE IS NO EVIDENCE BEFORE US WHICH, IN OUR VIEW, WOULD WARRANT A FINDING THAT THE UNIT PROPOSED BY THE APPLICANT IS OTHERWISE APPROPRIATE. RATHER, IN LIGHT OF THE EVIDENCE RELATING TO THE NATURE OF THE RESPONDENT'S BUSINESS, THE BOARD FINDS THAT AN "ALL EMPLOYEE" UNIT IS THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING IN THE PRESENT CASE.

6. WITH REFERENCE TO THE GEOGRAPHIC AREA TO BE COVERED BY ANY BARGAINING UNIT FOUND TO BE APPROPRIATE BY THE BOARD, THE RESPONDENT SUBMITS THAT HAVING REGARD TO THE INTERCHANGE OF EMPLOYEES BETWEEN LOCATIONS, THE UNIT SHOULD COVER ALL OF THE RESPONDENT'S EMPLOYEES IN ONTARIO. WHILE THE APPLICANT IS APPLYING IN THIS APPLICATION FOR A UNIT COVERING EMPLOYEES "WORKING IN AND OUT OF THE TORONTO OFFICE", AT THE BOARD HEARING ON MARCH 1ST, 1966, THE APPLICANT CONCURRED IN THE SUBMISSION OF THE RESPONDENT WITH RESPECT TO THE GEOGRAPHIC AREA TO BE COVERED BY ANY UNIT. THE BOARD IS SATISFIED ON THE BASIS OF THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES IN AN "ALL EMPLOYEE" BARGAINING UNIT EVEN IF IT WERE CONFINED TO THOSE EMPLOYEES WORKING AT AND OUT OF METROPOLITAN TORONTO, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. ACCORDINGLY, HAVING REGARD TO THE MEMBERSHIP POSITION OF THE APPLICANT, IT IS NOT NECESSARY NOR DOES THE BOARD DEEM IT ADVISABLE IN THIS APPLICATION TO MAKE A DETERMINATION THAT A PROVINCE-WIDE UNIT IS THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING.

7. HAVING REGARD TO THE BOARD'S FINDING IN PARAGRAPH 6 WITH RESPECT TO THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT, THE APPLICATION IS DISMISSED.

11378-65-R: LOCAL UNION 2163 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. THE WARNOCK HERSEY COMPANY LTD. (RESPONDENT).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: G. PETTA, K. G. ROSE AND M. BLANCHARD FOR THE APPLICANT, S. G. FISHER FOR THE RESPONDENT.

DECISION OF THE BOARD: (MARCH 4, 1966).

1. THE NAME "WARNOCK-HERSEY COMPANY LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "THE WARNOCK HERSEY COMPANY LTD."

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

3. THE APPLICANT IS APPLYING FOR A UNIT OF EMPLOYEES OF THE RESPONDENT CONSISTING OF ALL RADIOGRAPHERS AND RADIOGRAPHERS-IN-TRAINING WHICH IT CLAIMS IS AN APPROPRIATE

CRAFT UNIT. FOR THE SAME REASONS GIVEN BY THE BOARD IN THE WARNOCK HERSEY COMPANY LTD. CASE, (BOARD FILE NO. 11377-65-R) THE BOARD FINDS THAT AN "ALL EMPLOYEE" UNIT IS THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING IN THE INSTANT CASE.

4. THE RESPONDENT SUBMITS THAT BECAUSE OF THE EVIDENCE OF TEMPORARY INTERCHANGING OF EMPLOYEES, PARTICULARLY BETWEEN ITS HAMILTON AND TORONTO OPERATIONS, THE UNIT SHOULD COVER ALL OF THE EMPLOYEES OF THE RESPONDENT IN ONTARIO. WHILE THE APPLICANT IS APPLYING IN THIS APPLICATION FOR A UNIT COVERING EMPLOYEES "WORKING IN AND OUT OF THE HAMILTON OFFICE", AT THE BOARD HEARING ON MARCH 1ST, 1966, THE APPLICANT CONCURRED IN THE SUBMISSION OF THE RESPONDENT WITH RESPECT TO THE GEOGRAPHIC AREA TO BE COVERED BY ANY UNIT. THE BOARD IS SATISFIED ON THE BASIS OF THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES IN AN "ALL EMPLOYEE" BARGAINING UNIT EVEN IF IT WERE CONFINED TO THOSE EMPLOYEES WORKING AT AND OUT OF HAMILTON, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. ACCORDINGLY, HAVING REGARD TO THE MEMBERSHIP POSITION OF THE APPLICANT, IT IS NOT NECESSARY NOR DOES THE BOARD DEEM IT ADVISABLE IN THIS APPLICATION TO MAKE A DETERMINATION THAT A PROVINCE-WIDE UNIT IS THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING.

5. HAVING REGARD TO THE BOARD'S FINDING IN PARAGRAPH 4 WITH RESPECT TO THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT, THE APPLICATION IS DISMISSED.

11379-65-R: LOCAL UNION 2163 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. NORTH AMERICAN INSPECTION SERVICES LIMITED (RESPONDENT) AND EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND D. McDERMOTT.

APPEARANCES AT THE HEARING: G. PETTA FOR THE APPLICANT, R. D. PERKINS AND P. COWAN FOR THE RESPONDENT, D. STEVENS AND M. HIRST FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (MARCH 4, 1966).

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (j) OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT IS APPLYING FOR A UNIT OF EMPLOYEES OF THE RESPONDENT CONSISTING OF ALL RADIOGRAPHERS AND RADIOGRAPHERS-IN-TRAINING WORKING IN AND OUT OF THE OAKVILLE OFFICE OF THE RESPONDENT WHICH IT CLAIMS IS AN APPROPRIATE CRAFT UNIT. THE RESPONDENT SUBMITS THAT AN "ALL EMPLOYEE" UNIT WITH THE EXCEPTION OF SUPERVISORS AND OFFICE STAFF IS AN APPROPRIATE UNIT IN THE INSTANT APPLICATION.

3. AS A PRELIMINARY OBJECTION THE RESPONDENT CHALLENGED THE JURISDICTION OF THIS BOARD TO DEAL WITH THE INSTANT APPLICATION ALLEGING THAT THE BUSINESS OF THE RESPONDENT FALLS WITHIN THE EXCLUSIVE JURISDICTION OF THE CANADA LABOUR RELATIONS BOARD. LET US ASSUME FOR PURPOSES OF ARGUMENT, BUT WITHOUT MAKING ANY DETERMINATION THAT THIS BOARD HAS JURISDICTION WITH RESPECT TO THE INSTANT APPLICATION. WHILE THERE IS SOME EVIDENCE THAT RADIOGRAPHERS EXERCISE TECHNICAL SKILLS BY REASON OF WHI

THEY ARE DISTINGUISHABLE FROM OTHER EMPLOYEES THERE IS NO EVIDENCE OF RADIOGRAPHERS BARGAINING SEPARATELY FROM OTHER EMPLOYEES AND THE APPLICANT ADMITS THAT IT IS NOT A TRADE UNION WHICH HAS EVER BARGAINED EXCLUSIVELY FOR A UNIT OF RADIOGRAPHERS AND RADIOGRAPHERS-IN-TRAINING. THE BOARD ACCORDINGLY FINDS THAT THE APPLICANT HAS FAILED TO BRING ITSELF WITHIN THE PROVISIONS OF SECTION 6 (2) OF THE ACT AND IS NOT ENTITLED TO THE "CRAFT" UNIT WHICH IT IS SEEKING (SEE THE WARNOCK HERSEY COMPANY LTD. CASE, BOARD FILE NO. 11377-65-R). THE BOARD FINDS RATHER THAT AN "ALL EMPLOYEE" UNIT IS THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING IN THE PRESENT CASE.

4. THE LIST OF EMPLOYEES FILED BY THE RESPONDENT AS OF THE DATE OF THE MAKING OF THE APPLICATION, FEBRUARY 8TH, 1966, CONTAINS THE NAMES OF FOUR EMPLOYEES, ALL OF WHOM ARE RADIOGRAPHERS OR RADIOGRAPHERS-IN-TRAINING. AS OF THE DATE OF APPLICATION HOWEVER, TWO ADDITIONAL RADIOGRAPHERS WHO ARE REGULARLY EMPLOYED BY THE RESPONDENT AT OAKVILLE WERE TEMPORARILY WORKING OUT OF THE MONTREAL OFFICE OF THE RESPONDENT. ONE OF THESE EMPLOYEES WAS ABSENT FROM THE OAKVILLE OFFICE OF THE RESPONDENT FROM FEBRUARY 1ST TO FEBRUARY 15TH, 1966 AND THE OTHER WAS ABSENT FROM THE OAKVILLE OFFICE OF THE RESPONDENT FROM JANUARY 19TH TO FEBRUARY 26TH, 1966. IN ADDITION TO THE RADIOGRAPHERS AND RADIOGRAPHERS-IN-TRAINING THERE ARE THREE OTHER EMPLOYEES WHO ARE ELIGIBLE FOR INCLUSION IN AN "ALL EMPLOYEE" UNIT OF THE RESPONDENT AT OAKVILLE. ACCORDINGLY, THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING BY THE BOARD FOR THE PURPOSE OF THE COUNT IS SEVEN OR NINE DEPENDING ON WHETHER THE TWO RADIOGRAPHERS WHO WERE WORKING OUT OF THE MONTREAL OFFICE OF THE RESPONDENT AS OF THE DATE OF THE MAKING OF THE APPLICATION ARE INCLUDED OR EXCLUDED FROM THE UNIT. IF THE BARGAINING UNIT FOR THE PURPOSE OF THE COUNT IS SEVEN, THE APPLICANT HAS EVIDENCE OF MEMBERSHIP FOR ONLY THREE EMPLOYEES IN THE UNIT. IF THE BARGAINING UNIT FOR THE PURPOSE OF THE COUNT IS NINE, THE APPLICANT HAS EVIDENCE OF MEMBERSHIP FOR ONLY FOUR EMPLOYEES IN THE UNIT. IN OTHER WORDS, WHETHER THERE ARE SEVEN OR NINE EMPLOYEES IN THE UNIT FOR THE PURPOSE OF THE COUNT, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. ACCORDINGLY, IT IS NOT NECESSARY FOR THE BOARD TO MAKE ANY DETERMINATION WITH RESPECT TO WHETHER THE TWO EMPLOYEES WHO WERE WORKING OUT OF THE RESPONDENT'S OFFICE AT MONTREAL ON THE DATE OF THE MAKING OF THE APPLICATION ARE INCLUDED OR EXCLUDED FROM THE BARGAINING UNIT FOR THE PURPOSE OF THE COUNT.

5. FURTHER, IN VIEW OF THE MEMBERSHIP POSITION OF THE APPLICANT, IT IS NOT NECESSARY FOR THE BOARD TO MAKE ANY DETERMINATION ON THE QUESTION OF ITS JURISDICTION RAISED BY THE RESPONDENT OR TO MAKE ANY FURTHER INQUIRY WITH RESPECT TO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE WHICH WAS FILED WITH THE BOARD IN OPPOSITION TO THIS APPLICATION.

6. HAVING REGARD TO THE BOARD'S FINDING IN PARAGRAPH 4 WITH RESPECT TO THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT, THE APPLICATION IS DISMISSED.

11413-65-R: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (IUA) (APPLICANT) V. ONTARIO STEEL PRODUCTS COMPANY LIMITED (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, W. CORNWALL AND M. ANDRYC FOR THE APPLICANT, JAMES N. BARTLET, Q.C., B. D. PARK AND W. S. CAMPBELL FOR THE RESPONDENT, J. S. BOECKH, Q.C., AND T. F. EDMONDSON FOR THE OBJECTORS.

DECISION OF THE BOARD: (MARCH 8, 1966).

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE OBJECTORS FILED A DOCUMENT SIGNED BY EMPLOYEES OF THE RESPONDENT WHO OPPOSED THE APPLICATION.
2. WHILE THE OBJECTORS FAILED TO CAUSE SUFFICIENT MEMBERS OF THE APPLICANT TO SIGN THE DOCUMENT FILED IN OPPOSITION TO THE APPLICATION TO MATERIALLY AFFECT THE MEMBERSHIP POSITION OF THE APPLICANT, THE DOCUMENT CONTAINED THE FOLLOWING STATEMENT:

"WE BELIEVE THAT IN SOME INSTANCES UNDUE PRESSURE AND MISREPRESENTATION AS TO ATTITUDE OF OTHER EMPLOYEES WAS USED TO OBTAIN SIGNATURES"

3. THE APPLICANT DID NOT REQUEST PARTICULARS OF THE ALLEGATIONS CONTAINED IN THE PETITION PRIOR TO THE HEARING, HOWEVER, AT THE HEARING, THE APPLICANT ARGUED THAT SINCE THE CHARGES WERE NOT PARTICULARIZED AS REQUIRED BY SECTION 48 OF THE BOARD'S RULES OF PROCEDURE THE OBJECTORS SHOULD NOT BE PERMITTED TO ADDUCE EVIDENCE IN SUPPORT OF THE ALLEGATIONS.
4. WHILE THE BOARD CONCEDED THAT THE CHARGES CONTAINED IN THE PETITION WERE SO INDEFINITE OR INCOMPLETE AS TO HAMPER THE APPLICANT IN MEETING SUCH CHARGES, THE BOARD WAS ALSO OF OPINION THAT THE APPLICANT SHOULD HAVE TAKEN ADVANTAGE OF SECTION 47 (2) OF THE BOARD'S RULES OF PROCEDURE AND SHOULD HAVE REQUESTED THE OBJECTORS TO SUPPLY PARTICULARS OF THE ALLEGATIONS MADE. THE BOARD THEREFORE REFUSED TO STRIKE THE ALLEGATIONS FROM THE DOCUMENT FILED IN OPPOSITION TO THE APPLICATION. HOWEVER, THE BOARD DIRECTED THE OBJECTORS TO FILE FORTHWITH A STATEMENT OF PARTICULARS AS REQUIRED BY SECTION 48 OF THE BOARD'S RULES OF PROCEDURE. THE FOLLOWING ARE THE PARTICULARS FILED AT THE HEARING IN ACCORDANCE WITH THE BOARD'S DIRECTION.

"ON SATURDAY, FEBRUARY 12, 1966, ONE DON CARTER ORGANIZING ON BEHALF OF THE UNION, APPROACHED AN EMPLOYEE, GEORGE RISEBOROUGH, AND IN INDUCING HIM TO JOIN THE UNION MISREPRESENTED TO HIM THAT 95 PER CENT OF THE EMPLOYEES HAD JOINED AND THAT ONE LINDA LILLY, IN PARTICULAR, HAD JOINED. BOTH STATEMENTS WERE FALSE."

THE PARTIES AGREED THAT DON CARTER, WHO IS REFERRED TO IN THE PARTICULARS WAS AN EMPLOYEE OF THE RESPONDENT AND NOT A PAID OFFICIAL OF THE APPLICANT.

5. AT THE REQUEST OF THE APPLICANT THE BOARD INVITED THE PARTIES TO ARGUE WHETHER, IF THE PARTICULARS ARE PROVED BY EVIDENCE THEY COULD MATERIALLY AFFECT THE OUTCOME OF THIS APPLICATION. IF THE BOARD WAS TO DECIDE THAT THE RESULT OF THIS CASE WOULD BE MATERIALLY AFFECTED, THE PARTIES WOULD THEN BE PROVIDED WITH AN OPPORTUNITY TO CALL EVIDENCE WITH RESPECT TO THE ALLEGATIONS CONTAINED IN THE PETITION AS PARTICULARIZED ABOVE.

6. THE BOARD IS OF OPINION THAT IF EVIDENCE WERE CALLED TO SUBSTANTIATE THE FACTS AS ALLEGED IN THE PARTICULARS WE WOULD HAVE AN ISOLATED CASE OF AN EMPLOYEE WHO, IN HIS ENTHUSIASM TO SUPPORT THE APPLICANT UNION, MADE TWO UNTRUE STATEMENTS. THE FIRST, THAT 95% OF THE EMPLOYEES HAD JOINED THE APPLICANT UNION, WHEREAS IT WOULD APPEAR THAT AT THE TIME THE APPLICATION WAS MADE, THE APPLICANT HAD APPROXIMATELY 66% OF THE EMPLOYEES AS MEMBERS. THE SECOND UNTRUTH WOULD APPEAR TO BE THAT IT WAS ALLEGED THAT ONE EMPLOYEE WAS A MEMBER OF THE UNION WHEN IN FACT SUCH PERSON WAS NOT A MEMBER. NEITHER OF THESE UNTRUTHS COULD BE CONSTRUED AS COERCION, INTIMIDATION, THREATS OR UNDUE INFLUENCE BUT COULD BEST BE CONSTRUED AS "PUFFING". IF A PERSON TO WHOM THESE STATEMENTS WERE MADE CONSIDERED SUCH STATEMENTS VITAL TO HIS JOINING THE APPLICANT UNION FURTHER INQUIRIES WOULD, AS THEY SUBSEQUENTLY DID, DISCLOSE THE TRUTH. THE BOARD IS THEREFORE OF OPINION THAT EVEN IF THE FACTS IN SUPPORT OF THE ALLEGATIONS WERE PROVED THEY WOULD NOT ADVERSELY AFFECT THE APPLICANT'S MEMBERSHIP POSITION. SINCE THERE IS NO ALLEGATION, AND NOTHING FROM WHICH THE BOARD COULD REASONABLY DRAW THE INFERENCE, THAT THESE UNTRUTHS WERE PART OF A PATTERN OF CONDUCT EMPLOYED BY THE APPLICANT, SUCH UNTRUTHS COULD ONLY ADVERSELY AFFECT THE MEMBERSHIP EVIDENCE OF ONE MEMBER. EVEN IF THIS CARD WERE DISCOUNTED THE APPLICANT WOULD STILL BE IN A POSITION WHEREIN IT WOULD BE ENTITLED TO OUTRIGHT CERTIFICATION.

7. THE BOARD THEREFORE FINDS THAT THERE IS NO SUBSTANCE IN THE ALLEGATIONS MADE BY THE OBJECTORS WHICH COULD CONCEIVABLE AFFECT THE OUTCOME IN THIS CASE.

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11415-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 506 (APPLICANT) v. 20TH CENTURY MASONRY COMPANY (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: D. W. FORGIE AND MARINO TOPPAN FOR THE APPLICANT; ANTONIO GREGORIS AND PIO GUARIN FOR THE RESPONDENT; AND LODINO DIVINCENZO, E. ZANELLA, A. DIFONSO AND GERARDO PECCHIA APPEARING ON THEIR OWN BEHALF.

DECISION OF THE BOARD: (MARCH 2, 1966).

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3. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

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5. AT THE HEARING HELD IN THIS MATTER THE BOARD HEARD EVIDENCE RESPECTING THE CIRCUMSTANCES SURROUNDING THE ORIGINATION AND SIGNING OF THREE STATEMENTS OF OBJECTION FILED BY THREE EMPLOYEES WITHIN THE TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. IN ADDITION, EVIDENCE WAS HEARD RESPECTING ALLEGATIONS OF MISREPRESENTATION ON THE PART OF A REPRESENTATIVE OF THE APPLICANT DURING THE ORGANIZATIONAL CAMPAIGN.

6. THE BOARD HAS NO HESITATION IN FINDING THAT THE DOCUMENT FILED IN OPPOSITION TO THE APPLICATION BY LODINO DiVINCENZO MUST BE ACCORDED FULL WEIGHT AND ACCORDINGLY FINDS THAT DOUBT IS CAST ON THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT FOR THE SAID DiVINCENZO. ON THE OTHER HAND, HAVING REGARD TO THE ACTIVE SUPPORT OF REPRESENTATIVES OF MANAGEMENT IN THE PREPARATION OF THE STATEMENTS OF OBJECTION FILED BY EDGARDO ZANELLA AND ANTONIO DiFONSO AND TO THE FURTHER FACT THAT THE SAID REPRESENTATIVES WERE FULLY AWARE THAT THEY OUGHT NOT TO HAVE GIVEN SUCH SUPPORT, WE ARE UNABLE TO FIND THAT THE TWO STATEMENTS OF OBJECTION IN QUESTION CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT ON BEHALF OF THE SAID ZANELLA AND DiFONSO. IT IS CLEAR, THEN, THAT EVEN THOUGH DOUBT IS CAST ON THE MEMBERSHIP EVIDENCE OF DiVINCENZO, THE REMAINING EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT IS FOR MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION.

7. ALTHOUGH ZANELLA AND ONE, GERARDO PECCHIA, SUBMITTED WRITTEN ALLEGATIONS OF MISREPRESENTATION, THEIR SWORN TESTIMONY BEFORE THE BOARD DOES NOT REVEAL ANY IMPROPRIETY BY THE APPLICANT'S REPRESENTATIVE. NOR ARE WE PREPARED TO FIND, AFTER CONSIDERING ALL THE EVIDENCE BEFORE US, THAT THE ALLEGATIONS OF ANTONIO DiFONSO HAVE BEEN PROVED. IN THIS RESPECT THE EVIDENCE OF DiFONSO WAS UNSATISFACTORY, PARTICULARLY HIS INABILITY TO RECALL THE EXACT WORDS WHICH HE ALLEGED WERE USED BY THE APPLICANT'S REPRESENTATIVE. IN ANY EVENT, IT WOULD APPEAR THAT DiFONSO HIMSELF WAS LABOURING UNDER A MISUNDERSTANDING SINCE HE BASED HIS CLAIM OF MISREPRESENTATION ON THE STATEMENTS OF OTHER EMPLOYEES THAT ONLY TWO EMPLOYEES HAD SIGNED MEMBERSHIP CARDS FOR THE UNION WHEREAS, AT THE TIME HE HIMSELF SIGNED, SIX OTHER PERSONS OUT OF A TOTAL OF NINE EMPLOYEES (ON THE DATE OF THE MAKING OF THE APPLICATION) HAD IN FACT "SIGNED UP" FOR THE UNION. FINALLY, EVEN IF WE ARE TO ASSUME THAT THE APPLICANT'S REPRESENTATIVE MADE THE STATEMENTS WHICH DiFONSO CLAIMS WERE MADE, SUCH STATEMENTS HAVE USUALLY BEEN REGARDED BY THE BOARD AS MERE "PUFFING" NORMALLY ASSOCIATED WITH ORGANIZATIONAL CAMPAIGNS. IN ANY EVENT, THE STATEMENT WAS IN THIS CASE SUBSTANTIALLY TRUE.

8. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS AND FINDINGS, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11427-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)
v. THUNDER BAY HARBOR IMPROVEMENTS LIMITED (RESPONDENT) AND LUMBER & SAWMILL
WORKERS UNION - LOCAL 2693, OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS
OF AMERICA (INTERVENER).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (MARCH 29, 1966).

1. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 1 OF SECTION 44 AND SUBSECTION 3 OF SECTION 58 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE TAKING OF THE REPRESENTATION VOTE PURSUANT TO THE BOARD'S DIRECTION OF MARCH 1, 1966, IN THIS MATTER.
2. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD, MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE IN THE VOTING CONSTITUENCY DEFINED IN PARAGRAPH SEVEN OF THE BOARD'S DECISION OF MARCH 1, 1966 WERE CAST IN FAVOUR OF THE APPLICANT, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793.
3. BECAUSE OF THE WORDING OF THE COLLECTIVE AGREEMENT IN THIS CASE, THE BOARD WAS OBLIGED TO SET A VOTING CONSTITUENCY INSTEAD OF A BARGAINING UNIT IN ITS DECISION ORDERING A REPRESENTATION VOTE. IT IS NOW NECESSARY TO DETERMINE AN APPROPRIATE BARGAINING UNIT. IN APPLICATIONS IN THE CONSTRUCTION INDUSTRY INVOLVING THE PRESENT APPLICANT ITS USUAL PRACTICE IS TO EXCLUDE "NON-WORKING FOREMEN" RATHER THAN "FOREMEN". IN THESE CIRCUMSTANCES THE BOARD, THEREFORE, FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
4. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

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11433-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) v. OLYMPIA HOME BAKERY (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: NEIL GROGUTT FOR THE APPLICANT, T. F. STORIE AND N. PANTELIDIS FOR THE RESPONDENT, AND RETA GROLIAS AND CUR BROUMAS FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (MARCH 9, 1966).

1. THIS IS AN APPLICATION FOR CERTIFICATION IN OPPOSITION TO WHICH THERE WAS FILED A STATEMENT OF DESIRE, OR PETITION, SIGNED BY THREE EMPLOYEES OF THE RESPONDENT. THE EVIDENCE CLEARLY INDICATES THAT THE PETITION WAS PREPARED ON THE INSTRUCTIONS OF MANAGEMENT. IN THESE CIRCUMSTANCES, THE BOARD IS NOT PREPARED TO FIND THAT THE PETITION WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT.

2. COUNSEL FOR THE RESPONDENT SUBMITTED THAT NONE OF THE EMPLOYEES CONCERNED COULD SPEAK ENGLISH AND THAT THIS RAISED A DOUBT AS TO WHETHER THEY UNDERSTOOD THE IMPORT OF THEIR ACTIONS IN SIGNING MEMBERSHIP CARDS. IT WAS HIS SUGGESTION THAT THIS ELEMENT OF DOUBT COULD BE REMOVED BY THE HOLDING OF A REPRESENTATION VOTE. HE MADE IT QUITE CLEAR THAT HE WAS NOT MAKING ANY ALLEGATIONS OF IMPROPRIETY. IN THE ABSENCE OF ANY EVIDENCE AND WITHOUT DECIDING WHETHER, IF SUCH WERE FORTHCOMING, IT MIGHT PROPERLY BE RECEIVED AT THIS STAGE IN THE PROCEEDINGS, THE BOARD IS NOT PREPARED TO FIND THAT THE SUBMISSION IN ANY WAY AFFECTS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT.

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11435-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION # 1071 (APPLICANT) v. MOLLENHAUER CONTRACTING COMPANY LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (MARCH 2, 1966).

1. THE FACT THAT THE JOB AFFECTED BY THE APPLICATION MAY BE FINISHED OR MAY BE CLOSE TO TERMINATION AFTER THE FILING OF AN APPLICATION FOR CERTIFICATION IT IS NOT A FACTOR WHICH THIS BOARD TAKES INTO CONSIDERATION IN REACHING A DECISION ON SUCH AN APPLICATION. REFERENCE IS MADE TO THE NADECO LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1964, p. 608. FURTHERMORE THE BOARD IS PROHIBITED BY SECTION 92 (1) OF THE LABOUR RELATIONS ACT FROM CONFINING A BARGAINING UNIT TO A PARTICULAR PROJECT. HAVING REGARD TO THESE CONSIDERATIONS AND TO THE PROVISIONS OF SECTION 75 (9A) OF THE LABOUR RELATIONS ACT, THE BOARD DOES NOT DEEM IT ADVISABLE TO HOLD A HEARING IN THIS CASE.

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11445-65-R: KEMP PRODUCTS EMPLOYEES ASSOCIATION (APPLICANT) v. KEMP PRODUCTS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDERMOTT.

APPEARANCES AT THE HEARING: LEO J. GENT FOR THE APPLICANT, JAMES G. STEELE FOR THE RESPONDENT.

DECISION OF THE BOARD: (MARCH 10, 1966).

1. THIS IS AN APPLICATION FOR CERTIFICATION MADE ON FEBRUARY 23, 1966, IN WHICH ALL THE MEMBERSHIP DOCUMENTS FILED BY THE APPLICANT CONSISTED OF MEMBERSHIP CARDS SIGNED BY THE APPLICANT'S MEMBERS AND COUNTERSIGNED BY AN OFFICER OF THE APPLICANT. THERE WAS NOTHING IN WRITING SIGNED BY THE MEMBERS WHICH WOULD INDICATE THAT THERE HAD BEEN ANY MONEY PAYMENT OR OTHER FINANCIAL SACRIFICE REQUIRED OF THE MEMBERS ON JOINING THE APPLICANT.

2. IT IS THE BOARD'S WELL ESTABLISHED POLICY TO REQUIRE THAT DOCUMENTARY EVIDENCE OF MEMBERSHIP OF AN APPLICANT INCLUDE DOCUMENTARY EVIDENCE OF MONEY PAYMENT OR OTHER FINANCIAL SACRIFICE. SECTION 50 OF THE BOARD'S RULES OF PROCEDURE REQUIRES THAT SUCH DOCUMENTARY EVIDENCE OF MEMBERSHIP MUST BE FILED BY THE APPLICANT PRIOR TO THE TERMINAL DATE OF THE APPLICATION. SINCE THE TERMINAL DATE OF THIS APPLICATION WAS MARCH 3RD, 1966, NO NEW DOCUMENTARY EVIDENCE OF MEMBERSHIP CAN BE FILED BY THE APPLICANT.

3. THE BOARD IS THEREFORE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT DEEM TO BE APPROPRIATE AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

4. THE APPLICATION IS THEREFORE DISMISSED.

11455-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. GENERAL IMPACT EXTRUSIONS (MANUFACTURING LTD. (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: T. E. ARSMSTRONG, R. WHITE AND J. PAWSON FOR THE APPLICANT, D. CHURCHILL-SMITH AND F. N. DEWIS FOR THE RESPONDENT, AND NO ONE APPEARING FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (MARCH 30, 1966).

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3. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT SOUGHT CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES DESCRIBED AS "ALL EMPLOYEES OF THE RESPONDENT (INCLUDING ITS XYNO PLASTICS DIV.) EMPLOYED AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, OFFICE AND SALES STAFF".

4. IN ITS REPLY TO APPLICATION FOR CERTIFICATION THE RESPONDENT (HEREINAFTER CALLED "GENERAL IMPACT") STATED, "THE RESPONDENT WOULD POINT OUT THAT IT ALSO CARRIES ON BUSINESS AT 191 EVANS AVENUE UNDER A SEPARATE CORPORATE IDENTITY, NAMELY XYNO PLASTICS LIMITED. THIS COMPANY IS ENGAGED IN THE MANUFACTURE OF PLASTIC INJECTION MOULDINGS AND EMPLOYS A TOTAL PAYROLL OF 8 PERSONS, 6 OF WHOM FALL WITHIN THE DESCRIPTION OF THE GENERAL BARGAINING UNIT PROPOSED BY THE APPLICANT IN ITS APPLICATION." THE SIX PERSONS SAID TO FALL WITHIN THE BARGAINING UNIT ARE LISTED ON THE SCHEDULES FILED BY GENERAL IMPACT AND ARE IDENTIFIED BY THE WORD "XYNO" WRITTEN OPPOSITE EACH NAME ON THE LISTS.

5. GENERAL IMPACT AND XYNO PLASTICS LIMITED (HEREINAFTER REFERRED TO AS "XYNO") OCCUPY THE SAME PREMISES AT 191 EVANS AVENUE. ALL EMPLOYEES ARE PAID BY GENERAL IMPACT WHICH LATER RECOVERS FROM XYNO THE WAGES PAID BY IT TO THE EMPLOYEES OF THE LATTER COMPANY. THE CONTROL AND DIRECTION OF THE SIX EMPLOYEES, HOWEVER, IS RETAINED BY XYNO WHICH SUPPLIES SEPARATE SUPERVISION FOR THEM. THERE IS NO INTERCHANGE OF EMPLOYEES BETWEEN THE TWO COMPANIES.

6. ON THE BASIS OF THE FOREGOING THE BOARD FINDS THAT THE SIX PERSONS IDENTIFIED ON THE LISTS SUPPLIED BY GENERAL IMPACT BY THE WORD "XYNO" ARE EMPLOYEES OF XYNO PLASTICS LIMITED, A SEPARATE ASSOCIATE CORPORATION, AND NOT OF GENERAL IMPACT, AND CONSEQUENTLY ARE NOT TO BE CONSIDERED IN THE DETERMINATION OF THE BARGAINING UNIT STRENGTH OR MEMBERSHIP STATUS WITH RESPECT TO EMPLOYEES OF GENERAL IMPACT.
7. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
8. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT ALBERT HOGG AND WILLIAM SEYMOUR, DESCRIBED AS "PLANT CLERICALS", ARE NOT INCLUDED IN THE BARGAINING UNIT.
9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
10. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT AT GENERAL IMPACT EXTRUSIONS (MANUFACTURING) LTD. DESCRIBED IN PARAGRAPH 7 HEREOF.
11. WITH RESPECT TO THE MATTER OF THE APPLICANT AND XYNO PLASTICS LIMITED, THE BOARD IS SATISFIED THAT DUE TO THE CIRCUMSTANCES OF THE COMMON OCCUPANCY OF THE PLANT BY XYNO AND GENERAL IMPACT EMPLOYEES, COUPLED WITH THE PAYMENT OF XYNO EMPLOYEES BY GENERAL IMPACT, A BONA FIDE MISTAKE HAS BEEN MADE BY THE APPLICANT WITH THE RESULT THAT THE PROPER PARTY RESPONDENT HAS BEEN INCORRECTLY NAMED WITH RESPECT TO THE SIX XYNO EMPLOYEES WHOM THE APPLICANT SOUGHT TO REPRESENT AS EMPLOYEES OF WHAT IT BELIEVED TO BE THE XYNO PLASTICS DIVISION OF GENERAL IMPACT.
12. HAVING IN MIND THE FOREGOING, TOGETHER WITH THE PROVISIONS OF SECTION 78 OF THE ACT, AND IT HAVING BEEN AGREED BY COUNSEL FOR THE PARTIES BEFORE THE BOARD THAT THE BOARD SHOULD TREAT THE XYNO PLASTICS LIMITED ASPECT OF THE WHOLE MATTER AS CONSTITUTING A SEPARATE APPLICATION FOR CERTIFICATION, THE BOARD MAKES THE FOLLOWING FINDINGS WITH RESPECT TO INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), APPLICANT, AND XYNO PLASTICS LIMITED, RESPONDENT.
13. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.
14. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
15. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING

UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

16. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT AT XYNO PLASTICS LIMITED, DESCRIBED IN PARAGRAPH 14 HEREOF.

11475-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. INDIAN RESIDENTIAL SCHOOL, FORT FRANCES, ONTARIO, ADMINISTERED FOR THE INDIAN AFFAIRS BRANCH OF THE DEPARTMENT OF CITIZENSHIP AND IMMIGRATION, GOVERNMENT OF CANADA, BY THE OBLATE FATHERS (RESPONDENT).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: P. J. O'KEEFFE AND R. J. ANDERSON FOR THE APPLICANT, AND R. M. L. INNES FOR THE RESPONDENT.

DECISION OF THE BOARD: (MARCH 23, 1966).

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2. THIS IS AN APPLICATION FOR CERTIFICATION.

3. THE APPLICANT FAILED TO FILE A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS IN FORM 9 AS REQUIRED BY SECTION 6 OF THE BOARD'S RULES OF PROCEDURE.

4. FORM 9 IS AN INDISPENSABLE PART OF THE EVIDENCE RELATING TO THE PROOF OF MEMBERSHIP REQUIRED BY THE BOARD AND ITS ABSENCE IS FATAL TO THE APPLICATION.

5. THE APPLICATION IS, ACCORDINGLY, DISMISSED.

11525-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. ATCO INDUSTRIES LTD. (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (MARCH 28, 1966).

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5. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

6. THE RESPONDENT HAS REQUESTED A HEARING ON THE FOLLOWING GROUNDS: (1) THAT THERE ARE ONLY TWO EMPLOYEES WHO WOULD FALL INTO THE BARGAINING UNIT OF CARPENTERS AND CARPENTERS' APPRENTICES, SAVE AND EXCEPT NON-WORKING FOREMEN, WHEREAS THE APPLICANT IN ITS APPLICATION ALLEGED THAT THERE WERE FIVE PERSONS IN THE BARGAINING UNIT, (2) THAT THE BOARD SHOULD LIMIT THE AREA OF CERTIFICATION TO ITS NORMAL AREA RATHER THAN TO THE AREA PROPOSED BY THE APPLICANT.

AS WILL APPEAR BELOW THE BOARD DOES NOT PROPOSE TO GRANT THE AREA SOUGHT BY

THE APPLICANT, BUT INSTEAD WILL GRANT ITS NORMAL AREA, THAT IS, THE DISTRICT OF KENORA. THAT LEAVES, THEN, GROUND NUMBER ONE ONLY AS A REASON FOR PUTTING THE CASE ON FOR HEARING. ACCORDING TO THE FORM 60, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY, FILED BY THE APPLICANT, THERE WERE ONLY THREE PERSONS IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION AND NOT FIVE AS SUGGESTED IN PARAGRAPH 7 OF FORM 54, APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY. IT THUS APPEARS THAT THE PARTIES ARE ONLY APART BY ONE PERSON. THAT PERSON IS CLAIMED BY THE APPLICANT TO BE A CARPENTER AND BY THE RESPONDENT TO BE A LABOURER. IF THE EMPLOYEE IN QUESTION IS IN FACT A CARPENTER, THE APPLICANT UNION WOULD THEN HAVE ALL THREE PERSONS IN THE BARGAINING UNIT AS MEMBERS. IF, ON THE OTHER HAND, THE EMPLOYEE IN QUESTION IS A LABOURER, THEN THE APPLICANT UNION WOULD HAVE THE TWO PERSONS IN THE BARGAINING UNIT AS MEMBERS. REGARDLESS OF WHETHER THE ONE DISPUTED EMPLOYEE IS A CARPENTER OR A LABOURER, THE APPLICANT HAS ONE HUNDRED PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AS MEMBERS.

THE RESPONDENT HAS INFORMED THE BOARD THAT NONE OF THE THREE EMPLOYEES IN QUESTION ARE AT PRESENT EMPLOYED BY IT AND THAT IT DOES NOT ANTICIPATE EMPLOYING ANY OTHERS IN THE FUTURE IN THE AREA AFFECTED BY THE APPLICATION. THE FACT THAT THE EMPLOYER DOES NOT HAVE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE BOARD WOULD ISSUE A CERTIFICATE HAS NOT BEEN HELD BY THE BOARD TO BE A GROUND FOR REFUSAL TO ISSUE A CERTIFICATE, PROVIDING ALL THE BOARD'S OTHER REQUIREMENTS HAVE BEEN MET. SEE TRIO CARPENTERS (CONTRACTORS) CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1962, P. 333 AND MOLLENHAUER CONTRACTING COMPANY LIMITED CASE, BOARD FILE NUMBER 11414-65-R.

HAVING REGARD TO ALL THE ABOVE CIRCUMSTANCES, THE BOARD IS OF THE OPINION THAT THERE IS NO NECESSITY FOR HOLDING A HEARING IN THIS CASE.

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11535-65-R: BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA - LOCAL UNION 1891 (APPLICANT) v. LUX WHITMORE PAINTING COMPANY (RESPONDENT).

BEFORE: G. W. REED, Q. C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (MARCH 25, 1966).

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4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

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6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

IN MAKING THE ABOVE FINDING THE BOARD DID NOT TAKE INTO CONSIDERATION THE STATEMENT OF MEMBERSHIP CONCERNING TWO MEMBERS. THIS STATEMENT DOES NOT MEET THE BOARD'S STANDARDS REGARDING MEMBERSHIP EVIDENCE IN THAT THERE IS NOTHING BEFORE THE BOARD SIGNED BY THE EMPLOYEES IN QUESTION. REFERENCE IS MADE TO THE HEWSON AND SON, PLASTERERS CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1965, P. 510.

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11540-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 527 (AFL-CIO) (CLC) (APPLICANT) v. FEDERAL TILE COMPANY LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (MARCH 29, 1966).

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4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

5. IN ITS REPLY THE RESPONDENT REQUESTED A HEARING ON TWO GROUNDS. THE FIRST OF THESE RELATES TO THE EMPLOYMENT STATUS OF CERTAIN EMPLOYEES WHO WOULD FALL INTO THE PROPOSED BARGAINING UNIT. THREE OF THE EMPLOYEES WHO WORKED ON THE DATE OF THE MAKING OF THE APPLICATION, NAMELY, MARCH 18TH, 1966, WERE LAID OFF AT THE END OF THAT DAY AND APPARENTLY WILL NOT BE REHIRED. TWO EMPLOYEES WERE LAID OFF PRIOR TO MARCH 18, 1966 AND WILL NOT BE REHIRED. ANOTHER EMPLOYEE WAS TO BE LAID OFF ON MARCH 25, 1966 AND WILL NOT BE REHIRED. THE RESPONDENT ALSO POINTS OUT THAT IT HAS ONLY TWO PERMANENT LABOURERS AND THAT THESE OTHER LABOURERS CHANGE AS REQUIRED BY THE COURSE OF ITS OPERATIONS.

UNDER SECTION 7 (1) OF THE LABOUR RELATIONS ACT, THE BOARD ASCERTAINS THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT FOR THE PURPOSES OF THE COUNT "AT THE TIME THE APPLICATION WAS MADE" WHICH IN THIS CASE WAS MARCH 18, 1966. CONSEQUENTLY IN ASCERTAINING IN THE PRESENT CASE THE NUMBER OF PERSONS IN THE BARGAINING UNIT FOR THE PURPOSES OF THE COUNT, THE BOARD WOULD NOT TAKE INTO CONSIDERATION THOSE PERSONS LAID OFF PRIOR TO THAT TIME, BUT IT WOULD TAKE INTO ACCOUNT EMPLOYEES ACTUALLY WORKING ON MARCH 18, 1966. LAY OFFS SUBSEQUENT TO MARCH 18, 1966 CANNOT AFFECT THE POSITION OF THE APPLICANT IN SO FAR AS THE COUNT IS CONCERNED. ON MARCH 18, 1966, THERE WERE NINE EMPLOYEES IN THE BARGAINING UNIT WORKING FOR THE RESPONDENT. THE APPLICANT HAS AS MEMBERS SIX OF THE SAID NINE EMPLOYEES. UNDER THE PROVISIONS OF SECTION 7 (2) OF THE LABOUR RELATIONS ACT THE APPLICANT IS THUS ENTITLED TO BE CERTIFIED WITHOUT A REPRESENTATION VOTE.

THE SECOND GROUND ON WHICH THE RESPONDENT REQUESTED A HEARING IS THAT IT "QUESTIONS THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED BY THE UNION". THE RESPONDENT HAS SUBSEQUENTLY INFORMED THE BOARD THROUGH ITS SOLICITOR THAT IT IS NOT MAKING CHARGES OR FILING PARTICULARS WITH RESPECT THERETO.

HAVING REGARD TO THE ABOVE CONSIDERATIONS THE BOARD IS OF THE OPINION THAT A

HEARING IS NOT REQUIRED IN THE PRESENT CASE. REFERENCE IS MADE TO SECTION 75 (9A) OF THE LABOUR RELATIONS ACT.

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INDEXED ENDORSEMENTS - TERMINATION

11335-65-R: ROBERT CAMPBELL, ON HIS OWN BEHALF AND ON BEHALF OF THE EMPLOYEES OF PARRY SOUND GENERAL HOSPITAL (APPLICANT) V. LOCAL 866, OF THE CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D. McDERMOTT AND F. W. MURRAY.

APPEARANCES AT THE HEARING: WILLIAM S. COOK, ROBERT CAMPBELL AND VIOLET CRAWFORD FOR THE APPLICANT, T. E. ARMSTRONG AND W. ACTON FOR THE RESPONDENT.

DECISION OF: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER F. W. MURRAY. (MARCH 3, 1966).

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT.

2. THE APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS (FORM 18) WAS IN THE STYLE SET OUT ABOVE AND THE ADDRESS OF THE APPLICANT IN FORM 18 WAS STATED TO BE 68 WILLIAM STREET, PARRY SOUND, ONTARIO. THE NAME AND ADDRESS OF THE EMPLOYER OF THE EMPLOYEES AFFECTED BY THE APPLICATION WAS STATED TO BE PARRY SOUND GENERAL HOSPITAL, JAMES STREET, PARRY SOUND, ONTARIO.

3. HOWEVER, THE SIGNATURE FOR THE APPLICANT ON FORM 18 WAS SIGNED BY THE APPLICANT'S SOLICITOR UNDER THE FOLLOWING WORDS WHICH WERE TYPED ON THE FORM:

"PARRY SOUND GENERAL HOSPITAL BY ITS SOLICITORS:
MATHEWS, DINSDALE & CLARK PER:"

4. THE RESPONDENT RAISED A PRELIMINARY OBJECTION TO THIS APPLICATION AND ARGUED THAT WHILE THE APPLICATION WAS STYLED IN THE NAME OF THE EMPLOYEES OF THE EMPLOYER, THE APPLICATION ON ITS FACE WAS SIGNED FOR THE APPLICANT BY THE EMPLOYER.

5. THE APPLICANT'S SOLICITOR, AT THE HEARING, ADVISED THAT HE HAD OBTAINED INSTRUCTIONS FROM ROBERT CAMPBELL AND HAD PERSONAL KNOWLEDGE OF THE MATTER. THE APPLICANT'S SOLICITOR TOOK THE POSITION THAT THE RESPONDENT'S OBJECTION WAS BASED SOLELY UPON A TYPOGRAPHICAL ERROR ON THE PART OF A STENOGRAPHER IN THE OFFICE OF THE SOLICITORS FOR THE APPLICANT AND THAT HE WAS PERSONALLY EMBARRASSED OVER THE FACT THAT THIS ERROR WAS NOT NOTICED BY HIM. THE RESPONDENT ACCEPTED THIS EXPLANATION AS EVIDENCE IN THIS CASE.

6. THE APPLICANT'S SOLICITOR FURTHER ADVISED THAT NEITHER HE, NOR ANY OTHER MEMBER OF HIS FIRM EVER ACTED FOR OR ON BEHALF OF PARRY SOUND GENERAL HOSPITAL. IT WOULD APPEAR, HOWEVER, THAT THE APPLICANT'S SOLICITOR HAD ACTED FOR EMPLOYEES

OF PARRY SOUND GENERAL HOSPITAL IN A PREVIOUS APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT APPROXIMATELY TWO YEARS AGO. THE EVIDENCE WAS THAT THE EMPLOYEES OF PARRY SOUND GENERAL HOSPITAL CONTACTED A LOCAL SOLICITOR IN PARRY SOUND WHO DISCLAIMED SUFFICIENT KNOWLEDGE OF LABOUR RELATIONS MATTERS AND REFERRED THE EMPLOYEES TO THE APPLICANT'S PRESENT SOLICITOR.

7. THE BOARD IS SATISFIED THAT THE RESPONDENT'S OBJECTION IS IN FACT BASED ON A TYPOGRAPHICAL ERROR AND THAT THE SOLICITORS WHO COMPLETED FORM 18 INTENDED TO DO SO ON BEHALF OF THE APPLICANT DESCRIBED IN THE STYLE OF CAUSE IN THIS MATTER. THE BOARD IS THEREFORE OF OPINION THAT THE ERROR IN THE APPLICATION FORM IS A TECHNICAL DEFECT OR IRREGULARITY WITHIN THE MEANING OF SECTION 86 OF THE LABOUR RELATIONS ACT AND IS NOT SUCH AS WOULD INVALIDATE THE PROCEEDINGS AND THAT NO SUBSTANTIAL WRONG OR MISCARRIAGE OF JUSTICE WOULD OCCUR BY PROCESSING THIS APPLICATION ON ITS MERITS.

8. ROBERT CAMPBELL TESTIFIED THAT THE DOCUMENT SIGNIFYING IN WRITING THAT THE EMPLOYEES WHO SIGNED NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT, WAS PREPARED ON HIS INSTRUCTIONS BY THE APPLICANT'S SOLICITOR AND THAT HE WITNESSED ALL THE SIGNATURES ON THE DOCUMENT OUTSIDE OF THE EMPLOYER'S PREMISES WITHOUT ANY INTERFERENCE OR ASSISTANCE BY THE EMPLOYER. WHILE IT IS ACKNOWLEDGED THAT ROBERT CAMPBELL WAS NOT THE MOST LUCID WITNESS, HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS MADE TO THE BOARD, THE BOARD IS SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF PARRY SOUND GENERAL HOSPITAL IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.

9. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF PARRY SOUND GENERAL HOSPITAL. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF PARRY SOUND GENERAL HOSPITAL AT PARRY SOUND, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, CERTIFIED NURSING ASSISTANT STUDENTS GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, CHIEF ENGINEER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD, ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

10. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE TERM TECHNICAL PERSONNEL AS USED ABOVE INCLUDES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF: BOARD MEMBER D. McDERMOTT. (MARCH 3, 1966).

CONCURRING WITH THE DECISION OF MY COLLEAGUES.

HOWEVER, I WISH TO STATE THAT I AM FAR FROM SATISFIED WITH THE EVASIVE TESTIMONY AND OVERALL Demeanour OF THE APPLICANT'S WITNESS CAMPBELL. IN MY OPINION A PALL OF DOUBT PERVADES THIS MATTER THROUGHOUT.

11386-65-R: HARRY VOGT (APPLICANT) V. SUDBURY GENERAL WORKERS UNION
(LOCAL 101) (RESPONDENT) AND PAWSON'S (SUDBURY) LIMITED (INTERVENER).

- AND -

11387-65-R: REGINALD GILCHRIST (APPLICANT) V. SUDBURY GENERAL WORKERS UNION
(LOCAL 101) (RESPONDENT) AND PAWSON'S (SUDBURY) LIMITED (INTERVENER).

- AND -

11388-65-R: MARTTI PARVIAINEN (APPLICANT) V. SUDBURY GENERAL WORKERS UNION
(LOCAL 101) (RESPONDENT) AND PAWSON'S (SUDBURY) LIMITED (INTERVENER).

- AND -

11389-65-R: ROBERT A. DENNIE (APPLICANT) V. SUDBURY GENERAL WORKERS UNION
(LOCAL 101) (RESPONDENT) AND PAWSON'S (SUDBURY) LIMITED (INTERVENER).

- AND -

11390-65-R: WALTER SANWALD (APPLICANT) V. SUDBURY GENERAL WORKERS UNION
(LOCAL 101) (RESPONDENT) AND PAWSON'S (SUDBURY) LIMITED (INTERVENER).

- AND -

11391-65-R: PETER SMIJAN (APPLICANT) V. SUDBURY GENERAL WORKERS UNION
(LOCAL 101) (RESPONDENT) AND PAWSON'S (SUDBURY) LIMITED (INTERVENER).

- AND -

11392-65-R: JOHN P. KAYES (APPLICANT) V. SUDBURY GENERAL WORKERS UNION
(LOCAL 101) (RESPONDENT) AND PAWSON'S (SUDBURY) LIMITED (INTERVENER).

- AND -

11393-65-R: ADELARD BILADEAU (APPLICANT) V. SUDBURY GENERAL WORKERS UNION
(LOCAL 101) (RESPONDENT) AND PAWSON'S (SUDBURY) LIMITED (INTERVENER).

- AND -

11394-65-R: MARCEL CLOUTHIER (APPLICANT) V. SUDBURY GENERAL WORKERS UNION
(LOCAL 101) (RESPONDENT) AND PAWSON'S (SUDBURY) LIMITED (INTERVENER).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND
H. F. IRWIN.

APPEARANCES AT THE HEARING: ROBERT A. DENNIE AND HARRY VOGT FOR THE APPLICANTS,
ARTHUR KUBE FOR THE RESPONDENT, NO ONE FOR THE INTERVENER.

DECISION OF: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER.
(MARCH 11, 1966).

1. THE APPLICANTS HAVE APPLIED ON FEBRUARY 9TH, 1966, PURSUANT TO THE PROVISIONS
OF SECTION 43 OF THE LABOUR RELATIONS ACT, FOR A DECLARATION TERMINATING THE
BARGAINING RIGHTS OF THE RESPONDENT WITH RESPECT TO THAT UNIT OF EMPLOYEES OF
PAWSON'S (SUDBURY) LIMITED, AT SUDBURY, REPRESENTED BY THE RESPONDENT.

2. THE RESPONDENT AND PAWSON'S (SUDBURY) LIMITED WERE PARTIES TO A COLLECTIVE
AGREEMENT WHICH WAS EFFECTIVE FROM OCTOBER 28TH, 1963, UP TO AND INCLUDING
OCTOBER 28TH, 1964. FOLLOWING NOTICE TO BARGAIN FOR A RENEWAL OF THE COLLECTIVE
AGREEMENT THE RESPONDENT AND PAWSON'S (SUDBURY) LIMITED ENTERED INTO A "MEMORANDUM

OF SETTLEMENT" SIGNED ON BEHALF OF THE COMPANY AND THE UNION. THE LAST PARAGRAPH IN THIS MEMORANDUM OF SETTLEMENT READS AS FOLLOWS:

"THE UNDERSIGNED PARTIES RECOMMEND TO THEIR SUPERIORS OR MEMBERS THIS FOR A SETTLEMENT."

3. IT WOULD ACCORDINGLY APPEAR THAT IT WAS THE INTENTION OF THE PARTIES THAT SOMETHING FURTHER BE DONE AND THAT IF THE MINUTES OF SETTLEMENT WERE SUBSEQUENTLY AGREED TO THEY WOULD BE INCORPORATED IN A COLLECTIVE AGREEMENT. HOWEVER, NO COLLECTIVE AGREEMENT WAS ENTERED INTO FOLLOWING THE SIGNING OF THE MEMORANDUM OF SETTLEMENT AND THERE IS NOTHING IN WRITING SIGNED BY EITHER PARTY WHICH WOULD INDICATE THAT THE TERMS OF THE MEMORANDUM OF SETTLEMENT WERE IN FACT AGREED TO.
4. THE BOARD ACCORDINGLY FINDS THAT THE "MEMORANDUM OF SETTLEMENT" IS NOT A COLLECTIVE AGREEMENT AND ACCORDINGLY THIS APPLICATION IS TIMELY.
5. THE DOCUMENTARY EVIDENCE SUBMITTED IN SUPPORT OF THIS APPLICATION CONSISTED OF NINE INDIVIDUAL APPLICATIONS FOR DECLARATION TERMINATING THE BARGAINING RIGHTS (FORM 18) EACH OF WHICH WERE SIGNED BY A PERSON WHO PURPORTED TO BE AN EMPLOYEE OF PAWSON'S (SUDBURY) LIMITED.
6. THE APPLICANTS' WITNESS, MR. HARRY VOGT, TESTIFIED THAT THE SERVICE MANAGER OF PAWSON'S (SUDBURY) LIMITED (WHO WAS ONE OF THE SIGNATORIES TO THE MEMORANDUM OF SETTLEMENT) HAD HIS SECRETARY WRITE A LETTER TO THE BOARD, WHICH MR. VOGT SIGNED, WHEREIN THE BOARD WAS REQUESTED TO FORWARD COPIES OF FORM 18.
7. FOLLOWING RECEIPT OF FORM 18 THE SERVICE MANAGER CAUSED HIS SECRETARY TO COMPLETE THE INFORMATION REQUIRED BY FORM 18 AND TO INSERT THE NAME OF AN INDIVIDUAL EMPLOYEE ON EACH COPY OF THE FORMS. MR. VOGT'S CONSULTATION WITH THE SERVICE MANAGER WITH RESPECT TO THE ORIGINATION OF THESE DOCUMENTS AND HIS ASSISTANCE IN THEIR PREPARATION WAS KNOWN TO ALL OF THE EMPLOYEES.
8. MR. VOGT STATED THAT THIS ARRANGEMENT WAS MADE WITH THE SERVICE MANAGER TO SAVE MONEY.
9. AFTER THE DOCUMENTS WERE SIGNED THE SERVICE MANAGER CAUSED HIS SECRETARY TO TYPE THE ENVELOPE IN WHICH THE APPLICATIONS WERE MAILED TO THE BOARD.
10. WHILE MR. VOGT TESTIFIED THAT THE EMPLOYEES HAD DECIDED TO MAKE THE APPLICATION PRIOR TO ANY DISCUSSIONS WITH THE SERVICE MANAGER, WE FIND THAT BECAUSE THE SERVICE MANAGER PARTICIPATED IN THE ORIGINATION AND PREPARATION OF THE DOCUMENTS SIGNED BY THE EMPLOYEES, AND THIS FACT WAS KNOWN TO THE EMPLOYEES, THE DOCUMENTARY EVIDENCE FILED IN SUPPORT OF THIS APPLICATION IS NOT RELIABLE EVIDENCE FROM WHICH WE CAN FIND THAT THE EMPLOYEES OF PAWSON'S (SUDBURY) LIMITED IN THE BARGAINING UNIT, HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.
11. THIS APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF: BOARD MEMBER H. F. IRWIN. (MARCH 11, 1966).

I DISSENT.

HARRY VOGT, AN EMPLOYEE IN THE BARGAINING UNIT, TESTIFIED UNDER OATH THAT THE DECISION TO SEEK THE TERMINATION OF THE RESPONDENT UNION'S BARGAINING RIGHTS ORIGINATED WITH AND WAS MADE BY THE EMPLOYEES IN THE BARGAINING UNIT PRIOR TO ANY CONVERSATION WITH THE SERVICE MANAGER IN RESPECT THEREOF. HE STATED THAT THE EMPLOYEES WERE NOT SATISFIED WITH THE UNION'S PERFORMANCE AS THEIR BARGAINING AGENT. ANY ASSISTANCE GIVEN BY THE SERVICE MANAGER WAS MERELY IN RESPECT OF SECURING AND FILLING OUT THE APPLICATION FORMS REQUIRED BY THE BOARD AND WAS DONE AT THE REQUEST OF THE EMPLOYEES AFTER THEIR DECISION WAS MADE.

I AM SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION. NO EMPLOYEE HAS WRITTEN TO THE BOARD OPPOSING THE APPLICATION. ACCORDINGLY, I WOULD HAVE DIRECTED THE REPRESENTATION VOTE AS REQUIRED UNDER THE PROVISIONS OF SECTION 43 (3) OF THE LABOUR RELATIONS ACT TO CONFIRM THEIR EXPRESSED DESIRE THAT THE RIGHT OF THE TRADE UNION TO BARGAIN ON THEIR BEHALF BE TERMINATED.

11397-65-R: HARRY MOTT (APPLICANT) V. THE UNITED CEMENT, LIME & GYPSUM WORKERS INTERNATIONAL UNION CLC (RESPONDENT). (RE: FLETCHER TILE LIMITED)

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: (MARCH 1, 1966).

1. THE BOARD REVOKES ITS DECISION OF FEBRUARY 11TH, 1966, AND SUBSTITUTES THE FOLLOWING THEREFOR.
2. THE APPLICANT HAS APPLIED, ON FEBRUARY 9TH, 1966, PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WITH RESPECT TO THAT UNIT OF EMPLOYEES OF FLETCHER BRICK AND TILE LIMITED REPRESENTED BY THE RESPONDENT.
3. IT WOULD APPEAR THAT THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF FLETCHER BRICK AND TILE LIMITED ON JULY 27TH, 1964 BUT HAS NOT ENTERED INTO A COLLECTIVE AGREEMENT WITH FLETCHER BRICK AND TILE LIMITED.
4. IT WOULD ALSO APPEAR THAT A CONCILIATION OFFICER WAS APPOINTED BY THE MINISTER TO ASSIST THE RESPONDENT AND FLETCHER BRICK AND TILE LIMITED ON NOVEMBER 17TH, 1964.
5. IT WOULD FURTHER APPEAR THAT THE CONCILIATION OFFICER IS STILL SEIZED WITH THE MATTER PURSUANT TO HIS APPOINTMENT BY THE MINISTER AND THAT A CONCILIATION BOARD HAS NOT BEEN APPOINTED AND ACCORDINGLY 30 DAYS HAVE NOT ELAPSED FOLLOWING THE RELEASE OF THE REPORT OF THE CONCILIATION BOARD BY THE MINISTER OR IN THE ALTERNATIVE THAT 30 DAYS HAVE NOT ELAPSED FOLLOWING THE ADVICE BY THE MINISTER TO THE PARTIES THAT HE DOES NOT DEEM IT DESIRABLE TO APPOINT A CONCILIATION BOARD.
6. SECTION 46 (1) OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

"46. - (1) WHERE A TRADE UNION HAS NOT MADE A COLLECTIVE AGREEMENT WITHIN ONE YEAR AFTER ITS CERTIFICATION AND NOTICE

HAS BEEN GIVEN UNDER SECTION 11 AND THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR, NO APPLICATION FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE SHALL BE MADE,

- (A) UNLESS A CONCILIATION BOARD OR A MEDIATOR HAS BEEN APPOINTED AND THIRTY DAYS HAVE ELAPSED AFTER THE REPORT OF THE CONCILIATION BOARD OR THE MEDIATOR HAS BEEN RELEASED BY THE MINISTER TO THE PARTIES; OR
- (B) UNLESS THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD."

7. IT APPEARS TO THE BOARD, THEREFORE, FROM THE FACTS SET OUT ABOVE, THAT NEITHER OF THE 30 DAY TIME PERIODS REFERRED TO ABOVE HAVE ELAPSED PRIOR TO THE DATE OF THE MAKING OF THIS APPLICATION.

8. IF THE BOARD IS CORRECT IN ITS ASSUMPTION THAT THE ABOVE ARE THE FACTS OF THIS CASE, IT WOULD FOLLOW PURSUANT TO THE PROVISIONS OF SECTION 46 (1) OF THE ACT THAT THIS APPLICATION IS UNTIMELY.

9. THE BOARD ACCORDINGLY DIRECTS THE APPLICANT TO ADVISE THE BOARD, IN WRITING, ON OR BEFORE THE 8TH DAY OF MARCH, 1966, WHETHER, IN HIS OPINION, THE BOARD IS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT ABOVE. IF THE APPLICANT IS OF OPINION THAT THE BOARD IS IN ERROR HE WILL INCLUDE IN HIS ADVICE TO THE BOARD A SUMMARY OF THE FACTS IN SUPPORT OF HIS OPINION.

10. THIS APPLICATION WILL NOT BE PROCESSED FURTHER PENDING THE RECEIPT OF SUCH ADVICE AND SUMMARY OF FACTS FROM THE APPLICANT.

11. IF THE BOARD DOES NOT RECEIVE SUCH ADVICE SUPPORTED BY A SUMMARY OF FACTS AS HEREIN DIRECTED, THIS APPLICATION WILL BE DISPOSED OF PURSUANT TO THE PROVISION OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE WITHOUT FURTHER NOTICE TO THE APPLICANT.

11451-65-R: MOYER SAND (1965) LIMITED (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: J. B. ALLEN FOR THE APPLICANT, L. INGLE, G. MARSHALL AND E. HAGGARTY FOR THE RESPONDENT.

DECISION OF THE BOARD: (MARCH 21, 1966).

1. THE NAME "UNITED STEEL WORKERS OF AMERICA" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "UNITED

STEELWORKERS OF AMERICA".

2. THE APPLICANT EMPLOYER IS APPLYING PURSUANT TO SECTION 45 (2) OF THE ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT TRADE UNION.

3. THE RESPONDENT WAS CERTIFIED BY A CERTIFICATE OF THE BOARD DATED NOVEMBER 10TH, 1965 AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE APPLICANT. BY REGISTERED LETTER DATED DECEMBER 23RD, 1965 THE RESPONDENT GAVE NOTICE TO THE APPLICANT OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. FROM THAT DATE UNTIL THE MAKING OF THE INSTANT APPLICATION ON FEBRUARY 24TH, 1966 THE APPLICANT RECEIVED NO FURTHER COMMUNICATION FROM THE RESPONDENT.

4. GEORGE MARSHALL, A REPRESENTATIVE OF THE RESPONDENT, TESTIFIED THAT HE HAD NOT ATTEMPTED TO COMMUNICATE WITH THE APPLICANT DURING JANUARY OF 1966 BECAUSE HE HAD BEEN INFORMED THAT GRAYDON MOYER, THE APPLICANT'S MANAGER AT RIDGEVILLE, WAS GOING TO BE ABSENT ON VACATION UNTIL THE END OF THE MONTH. MARSHALL STATED THAT ANOTHER REASON FOR DELAY IN ATTEMPTING TO COMMENCE NEGOTIATIONS WITH THE APPLICANT WAS THAT HE WAS ONLY ABLE TO GET THE EMPLOYEES TOGETHER ON JANUARY 15TH TO DRAW UP THE UNION'S PROPOSALS. MARSHALL FURTHER TESTIFIED THAT SOME TIME DURING THE FIRST WEEK IN FEBRUARY AND AGAIN ON FEBRUARY 14TH OR 15TH HE TELEPHONED MOYER AT THE APPLICANT'S RIDGEVILLE OFFICE BUT ON BOTH OCCASIONS WAS INFORMED THAT MOYER WAS OUT OF THE OFFICE. ON NEITHER OCCASION DID MARSHALL LEAVE HIS NAME OR REQUEST THAT MOYER RETURN HIS CALL.

5. IT IS CLEAR THAT THE BASIC PREREQUISITES FOR THE MAKING OF A DECLARATION BY THE BOARD UNDER SECTION 45 (2) HAVE BEEN MET IN THAT THE RESPONDENT FAILED TO COMMENCE BARGAINING WITHIN SIXTY DAYS FROM THE GIVING OF NOTICE. THE MAKING OF A DECLARATION TERMINATING BARGAINING RIGHTS, HOWEVER, LIES IN THE DISCRETION OF THE BOARD AND BEFORE THE BOARD WILL EXERCISE ITS DISCRETION IN FAVOUR OF MAKING A DECLARATION IT MUST BE SATISFIED THAT THE TRADE UNION CONCERNED HAS FAILED TO TAKE STEPS WITHIN A REASONABLE TIME TO FORWARD THE INTERESTS OF THE EMPLOYEES IT REPRESENTS (SEE WALMER TRANSPORT COMPANY CASE, (1953) CCH CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER 1949-1954, ¶17,062; C.L.S. 76-404; OLIVER LUMBER COMPANY CASE, O.L.R.B. MONTHLY REPORT, APRIL 1963, PAGE 280; STARK TRUCK SERVICE (LONDON) LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1964, PAGE 150). THE BOARD, THEREFORE, AFFORDS TO THE TRADE UNION OR ANY OTHER INTERESTED PARTY AN OPPORTUNITY TO GIVE AN EXPLANATION FOR THE DELAY IN COMMENCING OR CONTINUING NEGOTIATIONS. WHERE THE EXPLANATION IS SATISFACTORY THE BOARD IN THE EXERCISE OF ITS DISCRETION WILL DECLINE TO ISSUE A DECLARATION. IF, HOWEVER, AS A RESULT OF THE CONDUCT OF THE TRADE UNION A REASONABLE DOUBT EXISTS AS TO THE WISHES OF THE EMPLOYEES, THE BOARD WILL TEST THEIR DESIRES BY DIRECTING THE TAKING OF A REPRESENTATION VOTE (SEE DOMINION STORES LIMITED CASE, (1956) CCH CANADIAN LABOUR LAW REPORTS, ¶16,047, C.L.S. 76-529).

6. WITH REFERENCE TO THE INSTANT CASE, WE HAVE SOME DIFFICULTY IN ACCEPTING MARSHALL'S EXPLANATIONS FOR THE TARDINESS OF THE RESPONDENT IN PURSUING NEGOTIATIONS WITH THE APPLICANT FOLLOWING THE GIVING OF NOTICE. WHILE MOYER'S EVIDENCE IS THAT HE WAS ABSENT ON VACATION FROM SHORTLY BEFORE CHRISTMAS UNTIL JANUARY 24TH, DENNIS EVANS, THE PRESIDENT OF THE APPLICANT, TESTIFIED THAT HE WAS WORKING OUT OF THE COMPANY'S ST. CATHARINES OFFICE DURING ALL OF THIS PERIOD AND

WAS IN THE RIDGEVILLE OFFICE A PART OF THREE DAYS IN EACH WEEK. WE FAIL TO UNDERSTAND WHY MARSHALL, IN THE ABSENCE OF MOYER, DID NOT COMMUNICATE WITH EVANS PARTICULARLY SINCE MARSHALL ADMITS THAT HE EXPECTED THAT EVANS WOULD PARTICIPATE IN NEGOTIATIONS WITH THE UNION. IN FACT, SINCE EVANS IS PRESIDENT OF THE COMPANY AND MOYER'S SUPERIOR IT WOULD SEEM LOGICAL FOR MARSHALL TO COMMUNICATE WITH EVANS RATHER THAN MOYER IN THE FIRST INSTANCE.

7. WHILE MARSHALL TESTIFIED THAT THE APPLICANT HAD DIFFICULTIES IN GETTING THE MEMBERSHIP TOGETHER TO FORMULATE THE UNION'S PROPOSALS, NO EXPLANATION WAS GIVEN AS TO THE NATURE OF THESE DIFFICULTIES OR WHY A MEETING WITH THE EMPLOYEES COULD NOT HAVE TAKEN PLACE PRIOR TO JANUARY 15TH. IN THIS CONNECTION, WE ARE MINDFUL OF MARSHALL'S EVIDENCE THAT SOME DISCUSSIONS REGARDING THE UNION'S DEMANDS HAD ALREADY TAKEN PLACE WITH THE EMPLOYEES PRIOR TO CERTIFICATION. BE THAT AS IT MAY EVEN AFTER THE UNION HAD DRAFTED ITS PROPOSALS ON JANUARY 15TH A PERIOD OF SOME FORTY DAYS ELAPSED PRIOR TO THE MAKING OF THE INSTANT APPLICATION DURING WHICH TIME IT CAN HARDLY BE SAID THAT MARSHALL ACTIVELY SOUGHT TO NEGOTIATE A COLLECTIVE AGREEMENT WITH THE COMPANY. WE WOULD MENTION THAT THERE IS NO EVIDENCE TO INDICATE THAT THE RESPONDENT WAS INTENTIONALLY DELAYING THE COMMENCEMENT OF NEGOTIATIONS AS A MATTER OF STRATEGY IN THE HOPE OF BEING ABLE TO NEGOTIATE A MORE ADVANTAGEOUS COLLECTIVE AGREEMENT AT A LATER DATE (SEE HOLLEY ELECTRIC LTD. CASE, O.L.R.B. MONTHLY REPORTS, MAY 1965, PAGE 136). WE WOULD ALSO POINT OUT THAT WHILE THE APPLICANT MADE NO EFFORT TO INITIATE NEGOTIATIONS, THERE IS NO EVIDENCE TO SUGGEST AN UNWILLINGNESS ON ITS PART TO BARGAIN WITH THE RESPONDENT.

8. WITH RESPECT TO THE EMPLOYEES THEMSELVES, THERE IS NO EVIDENCE AS TO HOW MANY WERE IN THE BARGAINING UNIT DURING THE PERIOD BETWEEN THE GIVING OF NOTICE AND THE MAKING OF THIS APPLICATION AND THERE IS NO DIRECT EVIDENCE TO INDICATE WHETHER OR NOT THE EMPLOYEES STILL WISH THE RESPONDENT TO CONTINUE TO REPRESENT THEM. NONE OF THE EMPLOYEES, HOWEVER, HAS FILED A STATEMENT OF DESIRE EXPRESSING OPPOSITION TO THIS APPLICATION ALTHOUGH THEY WERE AFFORDED AN OPPORTUNITY TO DO SO. ON THE OTHER HAND, THE APPLICANT HAS NOT DEMONSTRATED THAT IT HAS BEEN PREJUDICED BY THE TARDINESS OF THE RESPONDENT IN PURSUING NEGOTIATIONS, I.E., THERE IS NO EVIDENCE THAT THE COMPANY IS SEEKING A DECLARATION SO THAT IT WILL BE IN A POSITION TO ALTER WAGE RATES OR OTHER WORKING CONDITIONS (SEE WALMER TRANSPORT CO. LTD. CASE, SUPRA). MOREOVER, ONLY SIXTY-THREE DAYS ELAPSED BETWEEN THE GIVING OF NOTICE AND THE FILING OF THIS APPLICATION. IT IS RELEVANT TO NOTE, HOWEVER, THAT 3 1/2 MONTHS ELAPSED BETWEEN THE DATE ON WHICH THE RESPONDENT WAS CERTIFIED AND THE DATE OF THE FILING OF THIS APPLICATION. DESPITE THESE LATTER CONSIDERATIONS, THE LACK OF DILIGENCE DISPLAYED BY THE RESPONDENT IN CARRYING OUT ITS OBLIGATIONS AS THE BARGAINING AGENT FOR THE EMPLOYEES OF THE APPLICANT GIVES RISE TO A REASONABLE DOUBT AS TO WHETHER THE RESPONDENT STILL COMMANDS THE SUPPORT OF THE EMPLOYEES. ACCORDINGLY, IN ALL THESE CIRCUMSTANCES, WE ARE OF THE OPINION THAT A REPRESENTATION VOTE SHOULD BE TAKEN TO ASCERTAIN THE WISHES OF THE EMPLOYEES.

9. THE BOARD ACCORDINGLY DIRECTS THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES IN THE BARGAINING UNIT DESCRIBED IN THE BOARD'S CERTIFICATE OF NOVEMBER 10TH, 1965 BEING ALL EMPLOYEES OF THE APPLICANT AT RIDGEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF.

10. ALL EMPLOYEES OF THE APPLICANT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR

CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENTS - SECTION 65

10948-65-U: LOCAL 280 OF THE HOTEL & RESTAURANT EMPLOYEE'S AND BARTENDER'S INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) v. EASTWOOD PARK HOTEL AND ROBERT LAURENT (RESPONDENTS).

- AND -

11000-65-U: LOCAL 280 OF THE HOTEL & RESTAURANT EMPLOYEE'S AND BARTENDER'S INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) v. EASTWOOD PARK HOTEL AND ROBERT LAURENT (RESPONDENTS).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D. McDERMOTT AND F. W. MURRAY.

APPEARANCES AT THE HEARING: IAN G. SCOTT, FRANK CORTESE AND TERRY MEAGHER FOR THE COMPLAINANT, AND D. J. D. SIMMS FOR THE RESPONDENTS.

DECISION OF J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER F. W. MURRAY: (MARCH 3, 1966).

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT.

2. AT THE HEARING OF THIS MATTER THE COMPLAINT WITH RESPECT TO AKIS LASKARIS WAS NOT PROCEEDED WITH AND IS ACCORDINGLY DISMISSED.

3. ON THE BASIS OF ALL THE EVIDENCE, THE BOARD IS NOT SATISFIED THAT THEODORE BIBIS, JOHN PETRAKIS, PETER PERIDIS AND PETER LEONARDOU WERE DISCHARGED BY THE RESPONDENTS FOR UNION ACTIVITY CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT. WHILE IT WOULD APPEAR THAT THE RESPONDENT ROBERT LAURENT WAS OPPOSED TO THE UNIONIZATION OF HIS EMPLOYEES, WE CANNOT, ON THE BALANCE OF PROBABILITIES APPEARING ON THE EVIDENCE BEFORE US, CONCLUDE THAT THIS WAS THE REASON FOR THE DISCHARGE OF THESE PERSONS. THE COMPLAINTS WITH RESPECT TO THEM ARE ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER D. McDERMOTT: (MARCH 3, 1966).

I BEG TO DIFFER WITH THE VIEWS OF MY COLLEAGUES IN THIS MATTER. IN CASES OF THIS KIND THERE IS RARELY DIRECT EVIDENCE AS TO THE REAL CAUSE OF DISMISSAL, THE REAL MOTIVE AND REASON BEING BEST KNOWN TO THE PERSON OR PERSONS EFFECTING THE DISCHARGE.

IN THIS PARTICULAR INSTANCE I SEEK TO UNEARTH THE REAL MOTIVE IN DISMISSING THE COMPLAINANTS RATHER THAN THE LEGAL JUSTIFICATION FOR SAME. IN THE ABSENCE OF

DIRECT EVIDENCE AS REFERRED TO IN THE FOREGOING, ONE MUST REACH A CONCLUSION BASED ON A CAREFUL REVIEW OF THE INDIRECT AND CIRCUMSTANTIAL EVIDENCE, AND AN EQUALLY CAREFUL ASSESSMENT OF THE DEMEANOUR AND CREDIBILITY OF THE VARIOUS WITNESSES. HAVING DONE SO, I BASE MY VERDICT ON WHAT I CHOOSE TO CALL "A PREPONDERANCE OF PROBABILITIES".

A CLEAR PATTERN OF OPEN AGGRESSIVE HOSTILITY TOWARD THE "GREEK UNION" EMERGES. THIS HOSTILITY IS MANIFEST IN THE ATTITUDE AND BEHAVIOUR OF ROBERT LAURENT, THE PROPRIETOR OF THE HOTEL. IT IS APPARENT THAT THERE WAS A CALCULATED ENDEAVOUR ON THE PART OF LAURENT TO WEAKEN OR DESTROY THE GREEKS BY SYSTEMATICALLY TABULATING A SERIES OF HUMAN ERRORS AND MINOR MISDEMEANOURS IN ORDER TO SUBSTANTIATE CAUSE FOR DISMISSAL. WITH THE POSSIBLE EXCEPTION OF THE COMPLAINANT, THEODORE BIBIS, THERE IS NO EVIDENCE OF LAURENT INSTITUTING ANY FORM OF CORRECTIVE DISCIPLINE; INDEED, THE EVIDENCE SHOWS THAT THE MISDEMEANOURS OF OTHER EMPLOYEES WERE OVERLOOKED. ANY EMPLOYER BAITING A TRAP IN ORDER TO BUILD A CAUSE FOR DISMISSAL WOULD PROBABLY BE SUCCESSFUL, EVEN UNDER NORMAL CIRCUMSTANCES. BUT THIS IS NO MORE JUSTIFIABLE THAN A POLICEMAN SCATTERING DOLLAR BILLS ON A PUBLIC SIDEWALK IN ORDER TO ARREST A PEDESTRIAN PICKING THEM UP.

HOWEVER, THE ESSENTIAL INGREDIENT FOR AN APPLICANT TO SUCCEED IN A "SECTION 65" CASE SUCH AS THIS IS THE MOTIVE OF DISMISSAL FOR UNION ACTIVITY. IN MY OPINION THAT MOTIVE IS MANIFEST THROUGHOUT THE ENTIRE CASE. IT IS CLEAR THAT THE UNION WAS REGARDED AS A SORT OF ETHNIC ENTITY, MOST OF ITS MEMBERS BEING OF GREEK ORIGIN. ISN'T IT AN AMAZING COINCIDENCE, THEREFORE, TO FIND THAT ALL OF THE COMPLAINANTS IN THE INSTANT CASE ARE GREEKS?

IT IS ARGUED BY COUNSEL FOR THE RESPONDENTS THAT THERE ARE STILL MANY GREEKS LEFT AS EMPLOYEES AT THE HOTEL. I ATTACH LITTLE SIGNIFICANCE TO THIS. IT ISN'T NECESSARY TO ANNIHILATE AN ENTIRE ARMY IN ORDER TO SCORE A VICTORY.

ROBERT LAURENT'S AGGRESSIVE HOSTILITY TOWARD THE UNION, AND THE GREEK EMPLOYEES IN PARTICULAR, WAS CLEARLY EVIDENT THROUGHOUT THE HEARINGS FOR ALL TO SEE. INDEED, ON AT LEAST ONE OCCASION THIS BOARD SAW FIT TO ADMONISH HIM FOR HIS BEHAVIOUR; AND ON OTHER OCCASIONS IT WAS NECESSARY FOR HIS OWN COUNSEL TO RESTRAIN HIM. IN THIS CONNECTION ONE MUST GIVE WEIGHTY CONSIDERATION TO THE EVIDENCE OF THE COMPLAINANTS REGARDING THE STATEMENTS OF LAURENT AT CERTAIN AFTER-HOUR MEETINGS OF EMPLOYEES. IT IS TO BE NOTED THAT THE COMPLAINANTS WERE EXCLUDED FROM THE HEARINGS, AND THEREFORE DID NOT HEAR EACH OTHER'S TESTIMONY; YET ALL OF THEIR EVIDENCE REGARDING LAURENT'S STATEMENTS AND BEHAVIOUR AT THOSE MEETINGS WAS CONSISTENT. AS OPPOSED TO THIS, WE HAVE THE TESTIMONY OF THE RESPONDENTS' WITNESS VAN HORNE, WHO DENIED THE STATEMENTS MADE BY THE COMPLAINANTS. I CHOOSE NOT TO BELIEVE VAN HORNE WHOSE BIAS WAS QUITE EVIDENT.

THE PERIOD IN WHICH THE DISMISSALS TOOK PLACE; THE MANNER IN WHICH THEY WERE EFFECTED; THE ALLEGED CAUSE FOR DISMISSAL IN EACH INSTANCE; THE ATMOSPHERE OF OPEN AGGRESSIVE HOSTILITY WHICH PREVAILED; LEADS ME TO THE FIRM CONCLUSION THAT LAURENT STRUCK A BLOW OF RETALIATION, AND AS A RESULT THE COMPLAINANTS' DISMISSALS WERE IN FACT A VIOLATION OF THE LABOUR RELATIONS ACT. I WOULD THEREFORE HAVE ORDERED THEIR IMMEDIATE REINSTATEMENT WITH APPROPRIATE REDRESS.

10968-65-U: RAY MACADAM (COMPLAINANT) v. CANADIAN DREDGE & DOCK CO. LIMITED,
THE J. P. PORTER COMPANY LIMITED (A JOINT VENTURE) (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN
AND D. McDERMOTT.

APPEARANCES AT THE HEARING: RAY MACADAM FOR THE COMPLAINANT, AND JOSEPH
KOTLARCHUK FOR THE RESPONDENT.

DECISION OF J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER
H. F. IRWIN: (MARCH 16, 1966).

1. FURTHER TO THE BOARD'S DECISION IN THIS MATTER, DATED DECEMBER 7TH, 1965,
THE COMPLAINANT REQUESTED THE BOARD TO DETERMINE THE AMOUNT OF COMPENSATION
PAYABLE TO HIM, AND A HEARING WAS HELD TO HEAR THE REPRESENTATIONS OF PARTIES IN
THIS RESPECT ON MARCH 9TH, 1966.

2. AT THE TIME OF HIS DISCHARGE ON SEPTEMBER 23RD, 1965, THE COMPLAINANT WAS
EARNING THE BASIC WAGE OF \$10.98 PER DAY. HAD HE NOT BEEN DISCHARGED, BUT
RETAINED IN HIS EMPLOYMENT, HE WOULD HAVE BEEN LAID OFF ON NOVEMBER 26TH, 1965,
AND WOULD NOT BE RECALLED TO WORK UNTIL SOME TIME IN THE SPRING OF 1966. IT IS
AGREED THAT HIS BASIC EARNINGS FOR THE PERIOD FROM THE DATE OF HIS DISCHARGE UNTIL
NOVEMBER 26TH, 1965, WOULD HAVE BEEN \$702.72. IT IS FURTHER AGREED THAT THE
AMOUNT OF VACATION PAY TO WHICH HE WOULD HAVE BEEN ENTITLED WITH RESPECT TO THAT
PERIOD IS \$41.60. THE PERSON WHO REPLACED THE COMPLAINANT ON HIS JOB WORKED A
TOTAL OF SIXTY HOURS OVERTIME, AND, HAVING REGARD TO THE CIRCUMSTANCES, IT IS
REASONABLE TO CONCLUDE THAT THE COMPLAINANT WOULD LIKEWISE HAVE WORKED THIS AMOUNT
OF OVERTIME. IT IS AGREED THAT THE SUM PAYABLE IN THIS RESPECT WOULD BE \$116.40.
THE COLLECTIVE AGREEMENT PROVIDES FOR THE PAYMENT OF A "SUBSISTENCE AND QUARTERS
ALLOWANCE" OF \$90.00 PER THIRTY-DAY MONTH. THIS AMOUNT IS PAYABLE WITHOUT REGARD
TO WHETHER ANY EXPENSE IS ACTUALLY INCURRED, AND IN OUR VIEW IS AN AMOUNT TO WHICH
THE COMPLAINANT IS ENTITLED. IT IS AGREED THAT THE AMOUNT PAYABLE IN THIS RESPECT
WOULD BE \$192.00. IT IS OUR OPINION THAT THE COMPLAINANT WOULD BE ENTITLED TO
COMPENSATION IN RESPECT OF ALL OF THE FOREGOING AMOUNTS. THE COMPLAINANT DID MAKE
PROMPT AND REASONABLE EFFORTS TO MITIGATE HIS LOSS OF EARNINGS AND RECEIVED INCOME
FROM OTHER EMPLOYMENT, WHICH IT IS AGREED AMOUNTED TO \$375.00 FOR THE PERIOD IN
QUESTION. THE NET AMOUNT OF COMPENSATION TO WHICH THE COMPLAINANT IS ENTITLED IS
THEREFORE \$677.72. THIS DETERMINATION IS MADE WITH RESPECT TO THE LOSS OF
EARNINGS SUFFERED BY THE COMPLAINANT FROM THE DATE OF HIS DISCHARGE UNTIL THE DATE
OF THE SECOND HEARING IN THIS MATTER.

3. OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:-

AS COMPENSATION FOR THE LOSS OF WAGES AND EMPLOYMENT BENEFITS
FROM SEPTEMBER 23RD, 1965, TO AND INCLUDING MARCH 9TH, 1966, THE
RESPONDENT SHALL FORTHWITH PAY TO RAY MACADAM THE SUM OF \$677.72.

CONCURRING OPINION OF BOARD MEMBER D. McDERMOTT: (MARCH 16, 1966).

I CONCUR WITH THE DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT AS
SET FORTH IN THE MAJORITY DECISION. I WOULD, HOWEVER, POINT OUT THAT THIS

DETERMINATION IS MADE ONLY WITH RESPECT TO THE LOSSES SUFFERED BY THE COMPLAINANT UP UNTIL THE DATE OF THE SECOND HEARING IN THIS MATTER. IN MY VIEW, ALTHOUGH THE DECISION OF THE MAJORITY IS SILENT ON THIS POINT, THE BOARD'S DETERMINATION DOES NOT AFFECT WHATEVER CONTINUING RIGHTS THE COMPLAINANT MAY HAVE AS AN EMPLOYEE OF THE RESPONDENT.

INDEXED ENDORSEMENT - SECTION 47A

11385-65-M: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. FINDLAY KEMP DAIRIES LIMITED; SILVERWOOD DAIRIES LIMITED, AND RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC: AND ITS LOCAL 440 (RETAIL, WHOLESALE AND DAIRY WORKERS UNION) (RESPONDENTS).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, S. POWERS, S. MILLAR AND G. HARRISON FOR THE APPLICANT, JOHN P. SANDERSON, JOHN HOUSTON AND E. FINDLAY FOR THE RESPONDENT COMPANIES, H. BUCHANAN AND G. REEKIE FOR THE RESPONDENT UNION.

DECISION OF THE BOARD: (MARCH 8, 1966).

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT.
2. THE FACTS OF THIS CASE ARE NOT IN DISPUTE.
3. HAVING REGARD TO THE AGREED FACTS AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE RESPONDENT, FINDLAY KEMP DAIRIES LIMITED SOLD, WITHIN THE MEANING OF SECTION 47A (1) TO SILVERWOOD DAIRIES LIMITED, THE BUSINESS FORMERLY CARRIED ON BY FINDLAY KEMP DAIRIES LIMITED AT METROPOLITAN TORONTO. SUBSEQUENTLY THE RESPONDENT, SILVERWOOD DAIRIES LIMITED INTERMINGLED, WITHIN THE MEANING OF SECTION 47A (5), THE EMPLOYEES OF FINDLAY KEMP DAIRIES LIMITED WHO WERE REPRESENTED BY THE APPLICANT, WITH THE EMPLOYEES OF SILVERWOOD DAIRIES LIMITED WHO WERE REPRESENTED BY RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL: CIO:CLC AND ITS LOCAL 440 (RETAIL, WHOLESALE AND DAIRY WORKERS UNION).
4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE INTERMINGLED EMPLOYEES, IN THE CIRCUMSTANCES OF THIS CASE, CONSTITUTE ONE APPROPRIATE BARGAINING UNIT.
5. HAVING REGARD TO THE AGREEMENT OF THE PARTIES THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT PLANT PROTECTION EMPLOYEES, OFFICE STAFF, FARM INSPECTOR, CHIEF ENGINEER, ENGINEER-IN-CHARGE AT BRANCHES, FOREMEN, MILK ROUTE FOREMEN, THOSE ABOVE THE RANK OF FOREMAN AND MILK ROUTE FOREMAN, TERRITORY SLAESMEN, PERSONS HIRED FOR PART-TIME WORKING 24 HOURS OR LESS PER WEEK AND EMPLOYEES HIRED FOR RELIEF OR SEASONAL WORK, PROVIDED HOWEVER THAT ANY SUCH EMPLOYEE EMPLOYED CONTINUOUSLY FOR A PERIOD OF MORE THAN THREE MONTHS SHALL BE INCLUDED IN THE

BARGAINING UNIT AND EMPLOYEES HIRED FOR VACATION PERIOD, PROVIDED HOWEVER THAT ANY SUCH EMPLOYEE WHOSE PERIOD OF EMPLOYMENT CONTINUES AFTER OCTOBER 1ST 1 YEAR SHALL BE INCLUDED IN THE BARGAINING UNIT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. PURSUANT TO THE PROVISIONS OF SECTION 47A (7) AND FOR THE PURPOSES OF DETERMINING WHICH TRADE UNION SHALL BE THE BARGAINING AGENT FOR THE EMPLOYEES IN THE BARGAINING UNIT, THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

7. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC: AND ITS LOCAL 440 (RETAIL, WHOLESALE AND DAIRY WORKERS UNION).

8. THE MATTER IS REFERRED TO THE REGISTRAR.

REFERENCE TO BOARD PURSUANT TO SECTION 79A OF THE ACT DISPOSED OF DURING MARCH

11338-65-M: BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, (AFFILIATED WITH BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION A.F. OF L. C.I.O. C.L.C.) (TRADE UNION) v. THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR (EMPLOYER).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDERMOTT.

APPEARANCES AT THE HEARING: MARTIN LEVINSON AND J. BORG FOR THE TRADE UNION, KENNETH OUELLETTE FOR THE EMPLOYER, AND H. BUCHANAN FOR RETAIL, WHOLESALE AND DEPARTMENT STORE UNION LOCAL 519.

DECISION OF THE BOARD: (MARCH 14, 1966).

1. THIS IS A REFERENCE TO THE BOARD BY THE MINISTER OF LABOUR, PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT, OF THE QUESTION WHETHER THE TRADE UNION IS ENTITLED TO GIVE NOTICE TO BARGAIN TO THE EMPLOYER PURSUANT TO SECTION 47A OF THE ACT OR PURSUANT TO ANY OTHER PROVISIONS OF THE LABOUR RELATIONS ACT.

2. THE TRADE UNION, BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, (WHICH WILL BE REFERRED TO HEREAFTER AS "BUILDING SERVICE") REPRESENTED A UNIT OF EMPLOYEES OF THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS IN THE TOWN OF RIVERSIDE AND A UNIT OF EMPLOYEES OF THE BOARD OF COMBINED ROMAN CATHOLIC SEPARATE SCHOOLS OF SANDWICH WEST, AND THERE WERE COLLECTIVE AGREEMENTS MADE BETWEEN BUILDING SERVICE AND THE ABOVE SCHOOL BOARDS. BY ORDER OF THE ONTARIO MUNICIPAL BOARD, DATED AUGUST 5TH, 1965, AND DECLARED TO COME INTO FORCE ON JANUARY 1ST, 1966, THE TOWN OF RIVERSIDE AND A PORTION OF THE TOWNSHIP OF SANDWICH WEST, TOGETHER WITH CERTAIN OTHER MUNICIPALITIES AND PORTIONS OF MUNICIPALITIES WERE

ANNEXED TO THE CITY OF WINDSOR. IT APPEARS, HOWEVER, THAT THE DIRECTION WITH RESPECT TO TRANSFER OF PROPERTIES CONTAINED IN THIS ORDER WAS NOT BINDING UPON THE ROMAN CATHOLIC SEPARATE SCHOOL BOARDS OF RIVERSIDE OR OF SANDWICH WEST. COUNSEL ADVISED THE BOARD THAT THE MATTER OF TRANSFER OF PROPERTY AND OF THE OPERATIONS OF THOSE BOARDS IS THE SUBJECT OF A PRIVATE BILL, WHICH, ON THE DATE OF THE HEARING OF THIS MATTER, HAD BEEN GIVEN FIRST READING BY THE LEGISLATURE. IT IS CLEAR, HOWEVER, THAT THERE HAS BEEN A DE FACTO TRANSFER OF AUTHORITY, OPERATIONS AND PROPERTIES FROM THE RIVERSIDE AND SANDWICH SEPARATE SCHOOL BOARDS, WHICH ARE NO LONGER ACTIVE, TO THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR. THE WINDSOR BOARD HAS HIRED THE FORMER EMPLOYEES OF THE RIVERSIDE AND SANDWICH BOARDS WHO WERE IN THE BARGAINING UNITS REPRESENTED BY BUILDING SERVICE. THE EMPLOYEES OF THE WINDSOR BOARD, HOWEVER, ARE ALREADY REPRESENTED, FOR PURPOSES OF COLLECTIVE BARGAINING, BY THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 519, (REFERRED TO HEREAFTER AS "RETAIL WHOLESALE"), WHICH TRADE UNION WAS NOTIFIED OF THESE PROCEEDINGS, AND ATTENDED AT AND PARTICIPATED IN THE HEARING OF THIS MATTER.

3. COUNSEL FOR BUILDING SERVICE CONTENDS THAT ON THE ABOVE FACTS THE PROVISIONS OF SECTION 47A OF THE ACT APPLY AND THAT BY VIRTUE OF THOSE PROVISIONS BUILDING SERVICE IS ENTITLED TO BARGAIN WITH THE WINDSOR BOARD WITH RESPECT TO EMPLOYEES IN A BARGAINING UNIT "LIKE" THOSE WHICH IT REPRESENTED AMONG THE EMPLOYEES OF THE RIVERSIDE AND SANDWICH BOARDS. THE EMPLOYER AND RETAIL WHOLESALE RESIST THE CLAIM OF BUILDING SERVICE URGING THAT THERE HAS NOT, ON THE FACTS STATED, BEEN A "SALE OF A BUSINESS" WITHIN THE MEANING OF SECTION 47A OF THE ACT.

4. SECTION 47A OF THE ACT PROVIDES IN PART AS FOLLOWS:

47A (1) IN THIS SECTION,

(A) "BUSINESS" INCLUDES A PART OR PARTS THEREOF;

(B) "SELLS" INCLUDES LEASES, TRANSFERS AND ANY OTHER MANNER OF DISPOSITION, AND "SOLD" AND "SALE" HAVING CORRESPONDING MEANINGS.

(2) WHERE AN EMPLOYER WHO IS BOUND BY OR IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION OR ON BEHALF OF WHOSE EMPLOYEES A TRADE UNION HAS BEEN CERTIFIED AS BARGAINING AGENT OR HAS GIVEN OR IS ENTITLED TO GIVE NOTICE UNDER SECTION 11 OR 40 SELLS HIS BUSINESS, THE TRADE UNION CONTINUES, UNTIL THE BOARD OTHERWISE DIRECTS, TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD IN THE LIKE BARGAINING UNIT IN THAT BUSINESS, AND THE TRADE UNION IS ENTITLED TO GIVE TO THE PERSON TO WHOM THE BUSINESS WAS SOLD A WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT, AND SUCH NOTICE HAS THE SAME EFFECT AS A NOTICE UNDER SECTION 11.

5. THE WORD "BUSINESS" IN ITSELF IS A TERM OF BROAD GENERALITY AND CAN BE

UNDERSTOOD FOR PRACTICAL PURPOSES ONLY WITH RELATION TO THE PARTICULAR CONTEXT IN WHICH IT IS USED. WHILE SOME WOULD HAVE IT THAT

THE WORD IN ITS ORDINARY AND COMMON USE IS EMPLOYED TO DESIGNATE HUMAN EFFORTS WHICH HAVE FOR THEIR END LIVING OR REWARD; IT IS NOT COMMONLY USED AS DESCRIPTIVE OF CHARITABLE RELIGIOUS, EDUCATIONAL, OR SOCIAL AGENCIES.

EASTERBROOK V. HEBREW LADIES' ORPHAN SOCIETY; 82 A 561, 563, REFERRED TO IN BALLENTINE, LAW DICTIONARY (1948), 179.

IT HAS ALSO BEEN HELD THAT

THE WORD "BUSINESS" MAY ALSO INCLUDE AN ACTIVITY WITHOUT CONTEMPLATION OF PECUNIARY PROFIT.

SAMSON V. M.N.R. [1943] Ex. C.R. 17.

AND IT IS EVIDENT THE MEANING OF THE TERM CANNOT BE DETERMINED BY A COMPETITION OF DICTIONARY DEFINITIONS OR OF QUOTATIONS FROM CASES IN WHICH THE TERM IS CONSTRUED IN OTHER CONTEXTS. IN THE INSTANT CASE, THE TERM "BUSINESS" SHOULD BE GIVEN THAT INTERPRETATION MOST CONSISTENT WITH THE OTHER PROVISIONS OF THE LABOUR RELATIONS ACT AND WHICH WILL BEST EFFECT THE PURPOSES OF THAT SECTION OF THE ACT IN WHICH THE TERM APPEARS. IT SHOULD BE BORNE IN MIND THAT THE ACT DOES NOT DISTINGUISH BETWEEN PUBLIC AND PRIVATE BUSINESS, AND CONTEMPLATES THE EXISTENCE OF BARGAINING RIGHTS HELD BY TRADE UNIONS WITH RESPECT TO "EMPLOYERS" GENERALLY AND NOT SIMPLY THOSE ENGAGED IN COMMERCIAL ENTERPRISES. NOTHING IN THE ACT WOULD SUGGEST THAT ANY LIMITATION ON THE CONTINUANCE OF THESE BARGAINING RIGHTS SHOULD BE IMPOSED BY VIRTUE OF THE NON-COMMERCIAL NATURE OF ANY EMPLOYER'S "BUSINESS". THE TERM "BUSINESS" AS IT APPEARS IN THE LABOUR RELATIONS ACT, THEREFORE, OUGHT NOT TO BE QUALIFIED BY THE ADDITION OF THE ADJECTIVE "COMMERCIAL", BUT SHOULD RATHER BE READ AS REFERRING GENERALLY TO THE UNDERTAKING OF ANY EMPLOYER WHOSE OPERATIONS ARE SUBJECT TO THIS ACT. IT IS CLEAR AND NOT QUESTIONED THAT THE OPERATIONS OF ALL OF THE SCHOOL BOARDS REFERRED TO HEREIN ARE SUBJECT, AT LEAST AS FAR AS THE BARGAINING UNITS HERE INVOLVED ARE CONCERNED, TO THE PROVISIONS OF THE ACT. SECTION 47A (2) PROVIDES FOR THE CONTINUATION OF BARGAINING RIGHTS WITH RESPECT TO A UNIT OF EMPLOYEES OF "AN EMPLOYER WHO IS BOUND BY OR IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION" AND BOTH THE RIVERSIDE AND SANDWICH BOARDS WERE SUCH EMPLOYERS. IN THE UNIVERSITY OF WINDSOR CASE, BOARD FILE-NO. 6554-63-R, THE BOARD APPLIED THE PROVISIONS OF SECTION 47A IN A CASE INVOLVING A MERGER OF PREVIOUSLY INDEPENDENT UNIVERSITIES. A BROAD DEFINITION OF THE TERM "BUSINESS" IS IMPLICIT IN THAT HOLDING.

6. WHILE IT WAS NOT EXPRESSLY ARGUED THAT THE SCHOOL BOARDS' UNDERTAKINGS DID NOT CONSTITUTE A "BUSINESS" WITHIN THE MEANING OF THE ACT, COUNSEL FOR THE EMPLOYER DID URGE THAT (QUITE APART FROM THE INFORMALITY OF THE TRANSACTIONS WHICH HAVE TAKEN PLACE) THERE HAD BEEN NO "SALE" WITHIN THE MEANING OF THE ACT, SINCE THAT TERM REFERS TO CONSENSUAL TRANSACTIONS, WHILE IN THE INSTANT CASE THE TRANSACTIONS ARE ONES THE PARTIES WERE DIRECTED TO MAKE. THE WORD "SELLS", HOWEVER, HAS BEEN GIVEN A BROAD MEANING IN THE STATUTE, WHERE IT IS STATED TO INCLUDE "LEASES, TRANSFERS AND ANY OTHER MANNER OF DISPOSITION". WHILE THE TRANSACTIONS WITH WHICH WE ARE CONCERNED THUS COME LITERALLY WITHIN THE PROVISIONS OF THE ACT, IT IS OUR VIEW THAT

IN ANY EVENT THE WORD "SELLS" SHOULD NOT BE RESTRICTED TO "COMMERCIAL" SALES, FOR THE REASONS GIVEN IN THE PRECEDING PARAGRAPH.

7. THE BOARD IS OF OPINION THAT ON THE FACTS STATED THE PROVISIONS OF SECTION 47A APPLY AND THAT THEREFORE BUILDING SERVICE CONTINUES TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE WINDSOR BOARD IN THE "LIKE BARGAINING UNIT" TO THOSE FOR WHICH IT WAS BARGAINING AGENT FOR THE EMPLOYEES OF THE RIVERSIDE AND SANDWICH BOARDS. THUS, IN THE INSTANT CASE, THERE ARE TWO "LIKE BARGAINING UNITS", ONE OF EMPLOYEES WORKING AT SCHOOLS AND GROUNDS FORMERLY WITHIN THE JURISDICTION OF THE RIVERSIDE BOARD, THE OTHER OF EMPLOYEES AT SCHOOLS AND GROUNDS FORMERLY WITHIN THE JURISDICTION OF THE SANDWICH BOARD. IT SHOULD BE NOTED THAT IN A SITUATION OF THIS SORT IT IS THE DUTY OF THE BOARD TO DETERMINE THE "LIKE BARGAINING UNIT" TO THAT FORMERLY REPRESENTED BY A TRADE UNION. IF THIS WERE AN APPLICATION FOR CERTIFICATION, THE BOARD, PURSUANT TO SECTION 6 OF THE ACT, WOULD BE REQUIRED TO DETERMINE AN "APPROPRIATE" BARGAINING UNIT. IN THE CASE OF SCHOOL BOARDS, THE BOARD HAS INVARIABLY FOUND THAT ALL EMPLOYEES OF THE SCHOOL BOARD COMING WITHIN CERTAIN CLASSIFICATIONS CONSTITUTED AN APPROPRIATE UNIT. HOWEVER, AS THE BOARD POINTED OUT IN THE OSHAWA WHOLESALE LIMITED CASE, BOARD FILE NO. 9735-64-M,

THE PRACTICES OF THE BOARD IN CERTIFICATION APPLICATIONS WITH RESPECT TO THE APPROPRIATENESS OF BARGAINING UNITS, HOWEVER, MAY BE CIRCUMSCRIBED IN AN APPLICATION UNDER SECTION 47A, SINCE THE SECTION PROVIDES, EXCEPT IN SPECIAL CIRCUMSTANCES, THAT A TRADE UNION CONTINUES TO HOLD ITS BARGAINING RIGHTS IN THE LIKE BARGAINING UNIT. IN OTHER WORDS, IN APPLYING SECTION 47A, THE BOARD MUST CONSIDER NOT ONLY WHAT WOULD BE AN APPROPRIATE BARGAINING UNIT IN A CERTIFICATION PROCEEDING, BUT ALSO IT MUST TAKE INTO ACCOUNT, AND IN LARGE MEASURE BE GOVERNED BY, THE SCOPE OF THE BARGAINING UNIT ALREADY IN EXISTENCE.

IN THE INSTANT CASE, NOT ONLY HAS THERE BEEN NO INTERMINGLING OF EMPLOYEES, BUT THE BARGAINING UNITS CAN IN EACH CASE BE DESCRIBED WITH PRECISION BY REFERENCE TO GEOGRAPHIC LOCATION. IT IS OUR VIEW, THEREFORE, THAT BUILDING SERVICE EMPLOYEES UNION, LOCAL 210 CONTINUES TO BE THE BARGAINING AGENT FOR ALL EMPLOYEES OF THE EMPLOYER WITHIN THE FORMER MUNICIPAL BOUNDARIES OF THE TOWN OF RIVERSIDE IN ITS CARETAKING AND MAINTENANCE STAFF, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PART-TIME EMPLOYEES WORKING LESS THAN 24 HOURS A WEEK, AND THAT BUILDING SERVICE EMPLOYEES UNION, LOCAL 210 CONTINUES TO BE BARGAINING AGENT OF ALL EMPLOYEES OF THE EMPLOYER WITHIN THE FORMER MUNICIPAL BOUNDARIES OF THE TOWNSHIPS OF SANDWICH EAST AND SANDWICH WEST, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PROBATIONARY EMPLOYEES AND PART-TIME EMPLOYEES WORKING LESS THAN 6 HOURS A DAY.

8. IT SHOULD BE NOTED THAT THIS CASE HAS COME TO THE BOARD ON A REFERENCE FROM THE MINISTER, AND NOT BY WAY OF APPLICATION PURSUANT TO SECTION 47A OF THE ACT. WE HAVE DEALT, THEREFORE, ONLY WITH THE QUESTION REFERRED TO THE BOARD, AND MAKE NO COMMENT WITH RESPECT TO ANY OTHER ISSUES WHICH MIGHT APPEAR, OR WHICH MIGHT ARISE ON AN APPLICATION UNDER SECTION 47A.

9. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER OF LABOUR

IS: THE TRADE UNION IS ENTITLED TO GIVE NOTICE TO BARGAIN TO THE EMPLOYER PURSUANT TO SECTION 47A WITH RESPECT TO THE BARGAINING UNITS DESCRIBED IN PARAGRAPH 6 OF THIS ENDORSEMENT.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION

10198-65-R: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. COLUMBIA METAL ROLLING MILLS LIMITED (RESPONDENT) AND SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION No. 233 (INTERVENER #1) AND SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION No. 30 (INTERVENER #2).

- AND -

10200-65-R: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. WESTEEL PRODUCTS LIMITED (RESPONDENT) AND SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION No. 30 (INTERVENER #1) AND SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION No. 233 (INTERVENER #2).

-AND -

10210-65-R: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. ROSCO METAL PRODUCTS LIMITED (RESPONDENT) AND SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION No. 233 (INTERVENER #1) AND SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL UNION No. 30 (INTERVENER #2).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, R. WHITE AND BRUCE LEE FOR THE APPLICANT, WARREN K. WINKLER FOR THE RESPONDENTS, AND R. KOSKIE, H. KOTLER, RON TAYLOR AND GEORGE CRUMP FOR THE INTERVENERS.

DECISION OF THE BOARD: (MARCH 29, 1966).

1. THE INTERVENER IN THIS MATTER, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION No. 233, HAS REQUESTED THAT THE BOARD RECONSIDER ITS DECISION, DATED DECEMBER 10TH, 1965, IN WHICH THE BOARD ORDERED THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF ROSCO METAL PRODUCTS LIMITED. THE FACTS WITH RESPECT TO THESE MATTERS HAVE BEEN FULLY SET OUT IN THE EARLIER ENDORSEMENTS, DATED JUNE 22ND AND DECEMBER 10TH, 1965. IN ITS REQUEST FOR RECONSIDERATION, THE INTERVENER ALLEGED THAT THE BOARD HAS ERRED IN ORDERING THE CONSOLIDATION OF THE APPLICATIONS IN THESE MATTERS; THAT THE BOARD HAD, BY SUCH ORDER, MADE IT IMPOSSIBLE FOR IT TO DISPOSE OF EACH OF THE INDIVIDUAL SUBMISSIONS ON THEIR OWN MERITS; AND THAT THE BOARD HAD FAILED TO GIVE EFFECT TO ITS OWN DECISION CONTAINED IN THE ENDORSEMENT OF THE RECORD, DATED JUNE 22ND, 1965, THAT, ON CERTAIN ASSUMED FACTS, THE APPLICATION BY THE APPLICANT MADE WITH RESPECT TO EMPLOYEES OF ROSCO METAL PRODUCTS LIMITED WAS UNTIMELY.

2. THE MATTER WAS LISTED FOR HEARING TO ENTERTAIN THE REPRESENTATIONS OF THE PARTIES CONCERNING THE INTERVENER'S REQUEST FOR RECONSIDERATION OF THESE MATTERS. AT THE HEARING, COUNSEL FOR THE APPLICANT AND FOR THE RESPONDENT MADE THE

OBJECTION THAT RECONSIDERATION OF THE BOARD'S DECISION IN THESE CIRCUMSTANCES CONSTITUTED A DEPARTURE FROM THE BOARD'S POLICY WITH RESPECT TO RECONSIDERATION OF ITS DECISIONS. IT WAS ARGUED THAT SINCE THE INTERVENER HAD NOT REFERRED TO ANY NEW EVIDENCE NOT AVAILABLE TO THE PARTIES AT THE TIME OF THE EARLIER HEARING NOR TO ARGUMENTS NOT OPEN TO THE PARTIES AT THAT TIME, THIS WAS NOT A PROPER CASE FOR RECONSIDERATION.

3. THE BOARD'S JURISDICTION TO RECONSIDER ANY OF ITS DECISIONS IS CONTAINED IN SECTION 79 (1) OF THE LABOUR RELATIONS ACT.

79.(1) THE BOARD HAS EXCLUSIVE JURISDICTION TO EXERCISE THE POWERS CONFERRED UPON IT BY OR UNDER THIS ACT AND TO DETERMINE ALL QUESTIONS OF FACT OR LAW THAT ARISE IN ANY MATTER BEFORE IT, AND THE ACTION OR DECISION OF THE BOARD THEREON IS FINAL AND CONCLUSIVE FOR ALL PURPOSES, BUT NEVERTHELESS THE BOARD MAY AT ANY TIME, IF IT CONSIDERS IT ADVISABLE TO DO SO, RECONSIDER ANY DECISION, ORDER, DIRECTION, DECLARATION OR RULING MADE BY IT AND VARY OR REVOKE ANY SUCH DECISION, ORDER, DIRECTION, DECLARATION OR RULING.

THE BOARD'S POLICY IN THIS RESPECT HAS BEEN SET OUT IN SEVERAL DECISIONS, INCLUDING THE INTERNATIONAL NICKEL COMPANY OF CANADA CASE, 63 C.L.L.C. 1176, AND THE HOLLAND RIVER GARDENS COMPANY CASE, 63 C.L.L.C. 1253. THIS POLICY, HOWEVER, DOES NOT PRECLUDE A PARTY IN PROPER CASE, FROM MAKING REPRESENTATIONS AS TO THE PARTICULAR APPLICATION OF THE POLICY OR AS TO THE PROPRIETY OF ITS EXTENSION. IN MANY CASES SUCH REPRESENTATIONS MAY BE DEALT WITH ON THE BASIS OF WRITTEN SUBMISSIONS AND WITHOUT THE NECESSITY OF HOLDING A HEARING. IN THE INSTANT CASE, HAVING REGARD TO THE COMPLEXITY OF THE QUESTIONS INVOLVED, THE MATTER WAS LISTED FOR HEARING IN ORDER THAT ALL ARGUMENTS RELATING TO THESE MATTERS MIGHT BE FULLY CANVASSED. IN PARTICULAR, THE BOARD IS CONCERNED WITH THE ALLEGATION THAT THERE IS A CONTRADICTION BETWEEN THE BOARD'S ENDORSEMENT OF JUNE 22ND, 1965, AND THAT OF DECEMBER 10TH, 1965, APPEARING ON THE RECORD OF THESE MATTERS.

4. HAVING REGARD TO THE NATURE OF THE GROUNDS ADDUCED BY THE INTERVENER AS THE BASIS FOR ITS REQUEST THAT THE BOARD RECONSIDER, IT IS APPARENT THAT THE ARGUMENTS ON THE QUESTION WHETHER THE BOARD SHOULD RECONSIDER ITS DECISION ARE TO A LARGE DEGREE IDENTICAL WITH THOSE ON THE QUESTION WHETHER THE DECISION SHOULD STAND. FOR THIS REASON THE BOARD, OVERRULING THE OBJECTIONS OF THE APPLICANT, AFFORDED THE INTERVENER FULL OPPORTUNITY TO ARGUE ALL QUESTIONS ARISING IN THE MATTER. FOLLOWING THE ARGUMENTS OF COUNSEL FOR THE INTERVENER, COUNSEL FOR THE APPLICANT MOVED THAT THE BOARD DISMISS THE REQUEST TO RECONSIDER. THE BOARD RESERVED ITS RULING ON THIS MOTION, AND COUNSEL FOR THE APPLICANT AND FOR THE RESPONDENT PRESENTED THEIR ARGUMENTS ON ALL ASPECTS, AFTER WHICH COUNSEL FOR THE INTERVENER MADE HIS REPLY.

5. ON THE MOTION OF COUNSEL FOR THE APPLICANT THAT THE BOARD REFUSE TO RECONSIDER THESE MATTERS, IT IS OUR OPINION THAT THIS MOTION SHOULD BE DENIED. THIS RULING DOES NOT DETRACT FROM THE POLICY OF THE BOARD WITH RESPECT TO RECONSIDERATIONS ENUNCIATED IN THE CASES CITED ABOVE. INDEED, THE INTERVENER'S CASE COMES WITHIN THE SCOPE OF THE POLICY SINCE THE (ARGUABLY) APPARENT CONTRADICTION IN THE ENDORSEMENTS ON THE RECORD DOES RAISE AN ISSUE NOT BEFORE THE BOARD AT THE EARLIER HEARING. WE ARE OF OPINION, THEREFORE, THAT IN THESE CIRCUMSTANCES, THE BOARD'S DECISION OF DECEMBER 10TH, 1965, OUGHT TO BE RECONSIDERED. THE APPLICANT'S MOTION IS THEREFORE DENIED.

6. THE FIRST ISSUE RAISED BY THE INTERVENER INVOLVED THE ORDER OF THE BOARD, MADE AT THE SECOND HEARING IN THIS MATTER, HELD ON AUGUST 18TH, 1965, CONSOLIDATING THESE APPLICATIONS. COUNSEL FOR THE INTERVENER ARGUED THAT THESE WERE NOT MATTERS WHICH, ACCORDING TO THE PRACTICE OF THE COURTS, SHOULD HAVE BEEN CONSOLIDATED, SINCE THEY INVOLVE NEITHER THE SAME PARTIES NOR THE SAME ISSUES. IT IS THE CASE, HOWEVER, THAT ESSENTIALLY THE SAME ISSUE IS CENTRAL TO ALL THE APPLICATIONS IN THIS MATTER, NAMELY, WHO IS ENTITLED TO BE BARGAINING AGENT FOR A CERTAIN GROUP OF EMPLOYEES. IT SHOULD BE BORNE IN MIND THAT, BY SECTION 75 (9) OF THE LABOUR RELATIONS ACT, "THE BOARD SHALL DETERMINE ITS OWN PRACTICE AND PROCEDURE", AND THE RULES OF THE BOARD WITH RESPECT TO CONSOLIDATION ARE VERY WIDE (SEE SECTION 57 OF THE BOARD'S RULES OF PROCEDURE). IN ANY EVENT, THE CASES HAD BEEN LISTED FOR HEARING TOGETHER, AND THE EVIDENCE IN EACH CASE WOULD HAVE BEEN TO A LARGE EXTENT, MATERIAL TO THE OTHERS. FINALLY, IT MAY BE NOTED THAT THE ORDER CONSOLIDATING THE APPLICATIONS WAS MADE ON AUGUST 18TH, 1965, AT THE BEGINNING OF THE HEARING, WHEREAS THE REQUEST FOR RECONSIDERATION WAS NOT MADE UNTIL JANUARY 10TH, 1966, ONE MONTH AFTER THE ENDORSEMENT OF DECEMBER 10TH HAD BEEN ISSUED. IN OUR VIEW, THE INTERVENER WAS NOT IN FACT PREJUDICED BY THE CONSOLIDATION ORDER, WHICH IT WAS WITHIN THE BOARD'S JURISDICTION TO MAKE AND WHICH WAS IN OUR OPINION PROPERLY MADE IN THE CIRCUMSTANCES.

7. THE INTERVENER NEXT ARGUED THAT THE BOARD HAD NOT GIVEN EFFECT TO ITS DECISION CONTAINED IN THE ENDORSEMENT OF JUNE 22ND, 1965, IN THIS MATTER. THAT ENDORSEMENT AFFECTED ONLY THE APPLICATION WITH RESPECT TO ROSCO METAL PRODUCTS LIMITED. IT WAS NOT MADE BY THE AGREEMENT OF THE PARTIES ON CERTAIN ASSUMED FACTS. FOLLOWING THE DECISION ON THESE ASSUMED FACTS, THE MATTER WAS LISTED FOR HEARING IN ORDER THAT EVIDENCE TENDING TO ESTABLISH THOSE FACTS MIGHT BE HEARD TOGETHER WITH ANY OTHER MATTERS RELEVANT TO THE APPLICATION. IT IS APPARENT FROM THIS THAT EVEN IF THE ASSUMED FACTS WERE ESTABLISHED, THE APPLICATION COULD STILL NOT BE CONSIDERED TO HAVE BEEN DISPOSED OF. THE DECISION OF JUNE 22ND THUS WAS NOT A DECISION WITH RESPECT TO THE MERITS OF THE APPLICATION ITSELF, BUT WAS RATHER IN THE NATURE OF AN ADVISORY OPINION. THE ENDORSEMENT DOES NOT SET OUT THAT THE ASSUMED FACTS WERE THE ONLY FACTS ON WHICH THE APPLICATION WAS TO BE DETERMINED - THEY WERE RATHER THE ASSUMED FACTS ON WHICH ONE ISSUE IN THE CASE WAS TO BE DEALT WITH. THE IMPORTANT DETERMINATION WHICH IS SET FORTH IN THAT ENDORSEMENT (WHICH WE ARE NOT ASKED TO RECONSIDER) IS SET FORTH IN PARAGRAPH 10 AND 11 THEREOF AS FOLLOWS:-

IT IS OUR FINDING, THEREFORE, THAT ONCE THE INTERVENER, LOCAL 233, GAVE NOTICE, AS IT IS ASSUMED TO HAVE DONE IN THE INSTANT CASE, IT WAS PLACED BY VIRTUE OF SECTION 47A(9) OF THE ACT IN THE SAME POSITION AS IF IT HAD BEEN CERTIFIED UNDER SECTION 7 FOR THE EMPLOYEES, IN A LIKE BARGAINING UNIT, OF THE SUCCESSOR EMPLOYER.

ON THE BASIS OF THE ASSUMED FACTS, THEREFORE, WE ARE IMPELLED TO CONCLUDE THAT THIS APPLICATION IS UNTIMELY.

FOLLOWING THIS "INTERLOCUTORY" DECISION, THE MATTER WAS LISTED FOR HEARING "TO HEAR EVIDENCE AND ARGUMENT CONCERNING PROOF OF ALL OF THE ASSUMED FACTS (INCLUDING EVIDENCE AND ARGUMENT ON THE MERITS AS TO WHETHER OR NOT A SALE, WITHIN THE MEANING OF SECTION 47A TO THE RESPONDENT HAS IN FACT TAKEN PLACE AS ALLEGED AND WHETHER

NOTICE AS ALLEGED WAS IN FACT GIVEN) AND ON ALL OTHER REMAINING ISSUES." NO OBJECTION WAS TAKEN TO THIS PROCEEDING.

8. AT THE SECOND HEARING, WHILE THE FACTS ASSUMED FOR PURPOSES OF THE INTERLOCUTORY DECISION WERE LARGELY SUBSTANTIATED, THERE WERE OTHER FACTS ESTABLISHED WHICH THE APPLICANT WAS NOT, BY THE TERMS OF THE FIRST ENDORSEMENT, PRECLUDED FROM ESTABLISHING AND WHICH THE BOARD FELT WERE MATERIAL TO THE APPLICATIONS THEN BEFORE IT IN THE CONSOLIDATED MATTERS. IN THE RESULT, THE BOARD ORDERED THAT A REPRESENTATION VOTE BE HELD AMONG THE EMPLOYEES OF ROSCO METAL PRODUCTS LIMITED, IN WHICH BOTH THE APPLICANT AND THE INTERVENER WERE ENTITLED TO APPEAR ON THE BALLOT. BECAUSE THE BOARD HAD, IN ITS FIRST ENDORSEMENT, FOUND THE ROSCO APPLICATION TO BE UNTIMELY ON THE ASSUMED FACTS, BUT HAD LATER DIRECTED A VOTE IN WHICH THE APPLICANT'S NAME WOULD APPEAR ON THE BALLOT, THE INTERVENER HAS ARGUED THAT THE BOARD'S DECISIONS ARE INCONSISTENT. THE SECOND ENDORSEMENT, HOWEVER, WAS MADE ON THE BASIS OF ALL OF THE FACTS ESTABLISHED, NOT SIMPLY THOSE ASSUMED AS THE BASIS FOR THE INTERLOCUTORY HOLDING. FURTHER - AND WHAT IS MOST IMPORTANT - THE BOARD, IN ITS DECISION OF DECEMBER 10TH, AFFIRMED ITS FINDING OF JUNE 22ND AND SET OUT THE BASIS FOR ITS DIRECTION OF A REPRESENTATION VOTE DISTINGUISHING BETWEEN ITS HOLDING ON THE ASSUMED FACTS WHICH IT CONFIRMED AND THE REASONS FOR ITS DIRECTION OF A VOTE. THE BASIS FOR THE DIRECTION WAS THAT IT WAS PROPER FOR THE BOARD TO CONSIDER THE NATURE OF THE INTERVENER'S CONTINUING BARGAINING RIGHTS AS THESE WERE AFFECTED BY THE APPLICANT'S APPLICATION FOR CERTIFICATION FOR EMPLOYEES OF COLUMBIA METAL ROLLING MILLS LIMITED (THE PREDECESSOR EMPLOYER TO ROSCO). THIS IS QUITE A DIFFERENT MATTER FROM THE HOLDING THAT THE APPLICANT'S APPLICATION FOR CERTIFICATION FOR THE EMPLOYEES OF ROSCO WAS, WHERE ANOTHER UNION HAD GIVEN NOTICE PURSUANT TO SECTION 47A, UNTIMELY. IT IS THE FAILURE TO MAKE THIS DISTINCTION WHICH MAY HAVE LED THE INTERVENER TO THE VIEW THAT THE BOARD'S ENDORSEMENTS WERE INCONSISTENT.

9. THERE IS, THEREFORE, NO INCONSISTENCY IN THE DECISIONS OF THE BOARD APPEARING IN THE ENDORSEMENTS ON THE RECORD, DATED JUNE 22ND AND DECEMBER 10TH, 1965. THE BOARD DID NOT FAIL TO GIVE EFFECT TO ITS HOLDING THAT, ON CERTAIN ASSUMED FACTS, THE APPLICANT'S APPLICATION FOR CERTIFICATION FOR EMPLOYEES OF ROSCO WAS UNTIMELY. RATHER, THE BOARD MADE ITS DETERMINATION OF THE BASIS OF ALL THE RELEVANT FACTS WHICH WERE THEN PROPERLY BEFORE IT. IN REACHING THIS CONCLUSION, THIS PANEL OF THE BOARD HAS HAD REGARD ONLY TO THE ENDORSEMENTS THEMSELVES AND TO THE ARGUMENTS OF COUNSEL DIRECTED THERETO.

10. IN OUR OPINION, THIS IS NOT A CASE IN WHICH THE DIRECTION OF THE BOARD SHOULD BE VARIED OR REVOKED. THE REGISTRAR IS DIRECTED TO PROCEED WITH THE REPRESENTATION VOTE DIRECTED IN THE BOARD'S ENDORSEMENT, DATED DECEMBER 10TH, 1965.

11094-65-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION AFL.CIO.CLC. (APPLICANT V. GUILDLINE INSTRUMENTS LTD. (RESPONDENT) AND GUILDLINE EMPLOYEES UNION (INTERVENER) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND H. F. IRWIN.

DECISION OF: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER D. B. ARCHER.
(MARCH 22, 1966).

1. THE RESPONDENT BY ITS LETTER OF FEBRUARY 8TH, 1966, HAS REQUESTED THE BOARD TO REVIEW ITS DECISION OF DECEMBER 29TH, 1965, IN THIS MATTER, WHEREIN THE BOARD CERTIFIED THE APPLICANT AS BARGAINING AGENT FOR "ALL EMPLOYEES OF THE RESPONDENT AT SMITHS FALLS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF."
2. THE APPLICANT HAD APPLIED ON NOVEMBER 16TH, 1965, TO BE CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES IN THE BARGAINING UNIT DESCRIBED ABOVE AND REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.
3. AT THE TIME THE APPLICATION WAS MADE, THE RESPONDENT AND THE INTERVENER WERE PARTIES TO A COLLECTIVE AGREEMENT COVERING ALL EMPLOYEES OF THE RESPONDENT AT SMITHS FALLS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND SALARIED EMPLOYEES.
4. AT THE PRE-HEARING VOTE MEETING CONVENED BY THE BOARD'S EXAMINER ON NOVEMBER 25TH, 1965, AT WHICH ALL THE PARTIES WERE REPRESENTED, THE RESPONDENT AND THE INTERVENER AGREED THAT THE BARGAINING UNIT WHICH HAD BEEN PROPOSED BY THE APPLICANT WAS THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING. THIS WAS THE BARGAINING UNIT WHICH THE BOARD FOUND TO BE APPROPRIATE IN ITS DECISION OF DECEMBER 29TH, 1965 AND WHICH THE RESPONDENT NOW OBJECTS.
5. AT THE MEETING HELD ON NOVEMBER 25TH, 1965, THE NUMBER OF EMPLOYEES ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT WAS NOT CHALLENGED AND THE PARTIES FURTHER AGREED THAT THE NUMBER OF EMPLOYEES ON THE RESPONDENT'S LIST OF EMPLOYEES AS OF THE DATE OF MAKING THE APPLICATION, IN THE UNIT PROPOSED BY THE APPLICANT, WAS FIFTY. THEY ALSO AGREED THAT THERE WERE FIFTY EMPLOYEES IN THE UNITS ORIGINALLY PROPOSED BY THE RESPONDENT AND BY THE INTERVENER.
6. THE APPLICANT FILED IN SUPPORT OF ITS APPLICATION THIRTY-SEVEN MEMBERSHIP DOCUMENTS FOR PERSONS WHO APPEARED ON THE RESPONDENT'S LIST OF EMPLOYEES.
7. THE BOARD, ON NOVEMBER 30TH, 1965, DIRECTED A PRE-HEARING REPRESENTATION VOTE AND, IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE IN PRE-HEARING VOTE CASES, FIXED A VOTING CONSTITUENCY IN SIMILAR TERMS TO THE BARGAINING UNIT WHICH APPEARED IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER.
8. AT THE TAKING OF THE VOTE IN THIS MATTER, THE REVISED VOTERS' LIST WAS REDUCED TO FORTY-FIVE, AND OF THESE PERSONS TWENTY-FOUR CAST A BALLOT IN FAVOUR OF THE APPLICANT. ON DECEMBER 29TH, 1965, THE BOARD ACCORDINGLY CERTIFIED THE APPLICANT AS BARGAINING AGENT FOR THE UNIT OF EMPLOYEES DESCRIBED IN THE FIRST PARAGRAPH HEREOF WHICH HAD BEEN AGREED TO BY ALL THE PARTIES.
9. DURING THE COURSE OF THE COLLECTIVE BARGAINING FOLLOWING CERTIFICATION, IT CAME TO THE RESPONDENT'S ATTENTION THAT THERE WERE FOUR PERSONS WHO WERE "SALARIED EMPLOYEES" AND WHO WERE EXCLUDED FROM THE BARGAINING UNIT FORMERLY REPRESENTED BY THE INTERVENER. THESE FOUR PERSONS WERE NOT INCLUDED IN THE VOTING CONSTITUENCY

AND DID NOT ATTEMPT TO CAST A BALLOT, HOWEVER, THEY WERE INCLUDED IN THE BARGAINING UNIT DESCRIBED IN THE BOARD'S DECISION OF DECEMBER 29TH, 1965.

10. THE RESPONDENT NOW ARGUES THAT IF THE FOUR SALARIED EMPLOYEES HAD BEEN ADDED TO THE FORTY-FIVE VOTERS ON THE REVISED VOTERS' LIST, THE APPLICANT WOULD BE IN THE POSITION WHERE ONLY TWENTY-FOUR PERSONS VOTED IN FAVOUR OF THE APPLICANT OUT OF A TOTAL OF FORTY-NINE AND ACCORDINGLY THE APPLICANT WOULD HAVE RECEIVED LESS THAN FIFTY PER CENT OF THE VOTE AND THEREFORE WOULD NOT BE ENTITLED TO BE CERTIFIED FOR ALL EMPLOYEES IN THE BARGAINING UNIT.

11. THE QUESTION NOW BEFORE THE BOARD IS WHETHER THE BOARD SHOULD REVOKE ITS DECISION OF DECEMBER 29TH, 1965, AND DISMISS THE APPLICATION OR SHOULD VARY ITS DECISION OF DECEMBER 29TH, 1965, AND EITHER EXCLUDE SALARIED EMPLOYEES FROM THE BARGAINING UNIT OR DIRECT A FURTHER VOTE TO PERMIT THE SALARIED EMPLOYEES TO CAST A BALLOT.

12. THE SITUATION IN WHICH THE RESPONDENT NOW FINDS ITSELF WAS CREATED BY ITS OWN ERROR OR OMISSION. CERTAINLY THE RESPONDENT CANNOT BE HEARD TO COMPLAIN THAT IT WAS NOT AWARE THAT IT EMPLOYED FOUR SALARIED EMPLOYEES WHO WERE SPECIFICALLY EXCLUDED FROM THE BARGAINING UNIT FORMERLY REPRESENTED BY THE INTERVENER.

13. HAD THE FACT BEEN BROUGHT TO THE ATTENTION OF THE BOARD THAT THERE WERE SUCH PERSONS, THE BOARD WOULD HAVE DIRECTED A VOTE BETWEEN THE APPLICANT AND THE INTERVENER IN THE VOTING CONSTITUENCY DESCRIBED IN THE BOARD'S DECISION OF NOVEMBER 30TH, 1965, AND, IN A SEPARATE VOTING CONSTITUENCY, THE BOARD WOULD HAVE ASKED THE FOUR SALARIED EMPLOYEES TO INDICATE WHETHER THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT. SINCE THE APPLICANT RECEIVED A MAJORITY OF VOTES IN THE VOTING CONSTITUENCY DESCRIBED IN THE BOARD'S DECISION OF NOVEMBER 30TH, 1965, THE APPLICANT IS ENTITLED TO DISPLACE THE INTERVENER AS BARGAINING AGENT FOR THAT GROUP OF EMPLOYEES.

14. IN DETERMINING WHETHER THE BOARD SHOULD VARY OR REVOKE ITS DECISION OF DECEMBER 29TH, 1965, THE BOARD MUST TAKE THE FOLLOWING FACTORS INTO CONSIDERATION. THIS SITUATION WAS CREATED BY THE RESPONDENT IN THAT THE LIST OF EMPLOYEES CONSIDERED BY THE PARTIES AT THE PRE-HEARING VOTE MEETING ON NOVEMBER 25, 1965, HAD BEEN FILED BY THE RESPONDENT AS A LIST OF EMPLOYEES IN THE BARGAINING UNIT PROPOSED BY THE APPLICANT AND THE RESPONDENT FAILED TO INCLUDE ON THE LIST THE FOUR SALARIED EMPLOYEES. THE RESPONDENT AGREED TO A BARGAINING UNIT BEING DESCRIBED IN THE TERMS OF THE BOARD'S DECISION OF DECEMBER 29TH, 1965. THE RESPONDENT HAS ALLOWED OVER 2 1/2 MONTHS TO ELAPSE SINCE NOVEMBER 25TH, 1965, BEFORE BRINGING TO THE ATTENTION OF THE BOARD THE FACT THAT THE FOUR SALARIED EMPLOYEES WERE OMITTED FROM THE LIST IT FILED IN THIS MATTER. NONE OF THE FOUR SALARIED EMPLOYEES, UP TO THE DATE HEREOF, HAVE OBJECTED TO THE DESCRIPTION OF THE BARGAINING UNIT. THE APPLICANT HAD MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT (INCLUDING THE FOUR SALARIED EMPLOYEES) AS MEMBERS AT THE TIME THE APPLICATION WAS MADE.

15. IN ALL THESE CIRCUMSTANCES, THE BOARD DOES NOT CONSIDER IT ADVISABLE TO VARY OR REVOKE ITS DECISION OF DECEMBER 29TH, 1965, IN THIS MATTER.

16. THE REQUEST OF THE RESPONDENT IS THEREFORE DENIED.

DECISION OF: BOARD MEMBER H. F. IRWIN. (MARCH 22, 1966)

I DISSENT.

IN THE CIRCUMSTANCES OF THIS CASE, I WOULD HAVE AMENDED THE DESCRIPTION OF THE BARGAINING UNIT AS SET OUT IN THE BOARD'S ENDORSEMENT AND CERTIFICATE DATED DECEMBER 29, 1965 BY ADDING AT THE END THE WORDS "AND SALARIED EMPLOYEES". THIS WOULD MAKE THE BARGAINING UNIT IDENTICAL WITH THE VOTING CONSTITUENCY DETERMINED BY THE BOARD AS SET OUT IN THE OFFICIAL NOTICE OF THE BOARD POSTED IN THE PLANT IN FORM 48 AND DATED DECEMBER 1, 1965.

WHILE THE FOUR (4) SALARIED EMPLOYEES WERE PROPERLY EXCLUDED FROM THE VOTING CONSTITUENCY BECAUSE OF THEIR EXCLUSION FROM THE BARGAINING UNIT OF AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE EMPLOYER AND THE INTERVENER, THERE IS NO EVIDENCE BEFORE THE BOARD OF THEIR MEMBERSHIP OR NON-MEMBERSHIP IN THE APPLICANT UNION OR ANY EXPRESSED DESIRE ON THE PART OF THESE EMPLOYEES TO HAVE OR NOT TO HAVE THE APPLICANT UNION REPRESENT THEM FOR THE PURPOSES OF COLLECTIVE BARGAINING WITH THEIR EMPLOYER. CONSEQUENTLY, THEY SHOULD NOT BE INCLUDED IN THE BARGAINING UNIT FOR WHICH THE APPLICANT UNION WAS CERTIFIED AS BARGAINING AGENT. TO DO SO, MEANS THAT ON THE EVIDENCE OF 24 BALLOTS CAST IN FAVOUR OF THE APPLICANT UNION IN A VOTING CONSTITUENCY COMPRISING 45 EMPLOYEES, THE APPLICANT UNION HAS BEEN CERTIFIED AS BARGAINING AGENT IN A BARGAINING UNIT COMPRISING 49 EMPLOYEES OF THE RESPONDENT ON THE DAY OF THE VOTE. THIS IS NOT MORE THAN 50 PER CENT OF THE SAID EMPLOYEES AS REQUIRED BY THE PROVISIONS OF SECTION 7 (3) OF THE LABOUR RELATIONS ACT.

11438-65-R: WINDSOR TYPOGRAPHICAL UNION, No. 553 (APPLICANT) v. THE POST PRINTING COMPANY LTD., A DIVISION OF THOMSON NEWSPAPERS LIMITED (LEARNINGTON) (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDERMOTT.

DECISION OF THE BOARD: (MARCH 30, 1966).

1. THE RESPONDENT, BY ITS LETTER DATED MARCH 17TH, 1966, REQUESTED THE BOARD TO REVIEW ITS DECISION OF MARCH 11TH, 1966, IN THIS MATTER AND EXCLUDE FROM THE BARGAINING UNIT DEFINED IN THAT DECISION "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD".
2. THE RESPONDENT IN ITS REPLY CLAIMED THAT THE UNIT APPROPRIATE FOR COLLECTIVE BARGAINING, WHICH DIFFERED FROM THE UNIT PROPOSED BY THE APPLICANT, SHOULD NOT INCLUDE THE CLASSIFICATIONS IT NOW SEEKS TO EXCLUDE.
3. HOWEVER, AT THE HEARING IN THIS MATTER WHEN THE BOARD ENTERTAINED THE REPRESENTATIONS OF THE PARTIES AS TO THE DESCRIPTION OF THE BARGAINING UNIT, THE PARTIES AGREED TO THE DESCRIPTION CONTAINED IN PARAGRAPH 3 OF THE BOARD'S DECISION OF MARCH 11TH, 1966, WITH THE EXCEPTION OF THE EXCLUSIONS OF NON-WORKING FOREMAN. WHILE THE RESPONDENT REQUESTED THE EXCLUSION OF "FOREMAN" IT AGREED THAT THE NORMAL EXCLUSION IN THIS CRAFT BARGAINING UNIT WAS "NON-WORKING FOREMAN". THE

BOARD THEREFORE DETERMINED THAT "NON-WORKING FOREMAN" WAS THE APPROPRIATE EXCLUSION IN THIS CASE.

4. IN AGREEING TO THIS DESCRIPTION OF THE BARGAINING UNIT THE PARTIES AGREED TO DELETE ANY REFERENCE TO A MAILING ROOM. THE PARTIES FURTHER AGREED TO THE EXCLUSIONS CONTAINED IN PARAGRAPH 4 OF THE BOARD'S DECISION.

5. THE LISTS OF EMPLOYEES FILED BY THE RESPONDENT INDICATES THAT AT THE TIME THE APPLICATION WAS MADE THERE WERE NO PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND THERE WERE NO STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD. THE BOARD HAS NO EVIDENCE BEFORE IT FROM WHICH IT COULD FIND THERE IS A HISTORY OF THE RESPONDENT EMPLOYING PERSONS IN THE CLASSIFICATIONS WHICH THE RESPONDENT NOW SEEKS TO EXCLUDE.

6. WHILE IT MAY BE THAT THE RESPONDENT NEVER CONSCIOUSLY INTENDED TO ABANDON ITS REQUEST FOR THE EXCLUSION OF 24 HOUR PERSONS AND STUDENTS, THE BOARD IS OF OPINION THAT IT DID IN FACT ABANDON THE REQUEST WHEN IT AGREED TO THE DESCRIPTION OF THE BARGAINING UNIT WHICH MADE NO REFERENCE TO THE EXCLUSION OF SUCH PERSONS, ESPECIALLY SINCE EXCLUSIONS FORM THE BARGAINING UNIT WERE EXTENSIVELY DISCUSSED AT THE HEARING.

7. IT IS THE BOARD'S USUAL PRACTICE TO EXCLUDE 24 HOUR PERSONS AND STUDENTS FROM THE FULL TIME BARGAINING UNIT IF THE EMPLOYER HAS A HISTORY OF EMPLOYING SUCH PERSONS, WHEN ONE OF THE PARTIES MAKES A REQUEST FOR SUCH AN EXCLUSION.

8. IN THIS CASE, HOWEVER, THERE IS NO EVIDENCE THAT THE RESPONDENT HAD A HISTORY OF EMPLOYING SUCH PERSONS AND IF SUCH EVIDENCE IS AVAILABLE NOW, IT WAS CERTAINLY AVAILABLE AT THE HEARING IN THIS MATTER.

9. HAVING REGARD TO ALL THE FACTORS SET OUT ABOVE AND THE FACT THAT THE RESPONDENT DOES NOT ALLEGE THAT NEW EVIDENCE IS NOW AVAILABLE WHICH WAS NOT AVAILABLE AT THE HEARING IN THIS MATTER AND ESPECIALLY THE FACT THAT THE RESPONDENT AGREED TO THE DESCRIPTION OF THE BARGAINING UNIT, THE BOARD DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION OF MARCH 11TH, 1966, IN THIS MATTER.

10. THE RESPONDENT'S REQUEST IS THEREFORE DENIED.

STATISTICAL TABLES FOR MARCH 1966

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	MARCH 1ST 1966	12 MONTHS OF 1965-66	FISCAL YEAR 1964-65
I. CERTIFICATION	104	987	951
II. DECLARATION TERMINATING BARGAINING RIGHTS	2	68	107
III. DECLARATION OF SUCCESSOR STATUS	-	25	8
IV. DECLARATION THAT STRIKE UNLAWFUL	2	50	36
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	4	5
VI. CONSENT TO PROSECUTE	2	91	68
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	17	113	159
VIII. MISCELLANEOUS	<u>6</u>	<u>54</u>	<u>55</u>
TOTAL	<u>133</u>	<u>1392</u>	<u>1389</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	MARCH 1ST 1966	12 MONTHS OF 1965-66	FISCAL YEAR 1964-65
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	87	1130	1162

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	MARCH 1966	1ST 12 MONTHS OF 1965-66	FISCAL YEAR 1964-65
I. CERTIFICATION	108	998	910
II. DECLARATION TERMINATING BARGAINING RIGHTS	14	70	110
III. DECLARATION OF SUCCESSOR STATUS	1	29	8
IV. DECLARATION THAT STRIKE UNLAWFUL	2	50	36
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	4	5
VI. CONSENT TO PROSECUTE	5	91	71
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	8	114	167
VIII. MISCELLANEOUS	<u>4</u>	<u>70</u>	<u>30</u>
TOTAL	<u>142</u>	<u>1426</u>	<u>1337</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>MARCH 1ST 12 MTHS FISCAL YR.</u>			<u>MARCH 1ST 12 MTHS FISCAL YR.</u>		
	<u>1966</u>	<u>1965-66</u>	<u>1964-65</u>	<u>1966</u>	<u>1965-66</u>	<u>1964-65</u>
I. <u>CERTIFICATION</u>						
GRANTED	72	731	666	2757	20529	19497
DISMISSED	24	180	158	351	27189	6761
WITHDRAWN	<u>12</u>	<u>87</u>	<u>86</u>	<u>818</u>	<u>4294</u>	<u>3360</u>
TOTAL	<u>108</u>	<u>998</u>	<u>910</u>	<u>3926</u>	<u>52012</u>	<u>29618</u>
II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>						
GRANTED	3	29	51	81	1646	1128
DISMISSED	11	36	54	31	796	1221
WITHDRAWN	<u>-</u>	<u>5</u>	<u>5</u>	<u>-</u>	<u>251</u>	<u>105</u>
TOTAL	<u>14</u>	<u>70</u>	<u>110</u>	<u>112</u>	<u>2693</u>	<u>2454</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE
AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
		MARCH 1ST 1966	12 MONTHS 1965-66	FISCAL YEAR 1964-65
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	8	13
	DISMISSED	-	4	5
	WITHDRAWN	<u>2</u>	<u>38</u>	<u>18</u>
	TOTAL	<u>2</u>	<u>50</u>	<u>36</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	1
	DISMISSED	-	4	1
	WITHDRAWN	<u>-</u>	<u>-</u>	<u>2</u>
	TOTAL	<u>-</u>	<u>4</u>	<u>5</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	-	31	13
	DISMISSED	-	15	17
	WITHDRAWN	<u>5</u>	<u>45</u>	<u>41</u>
	TOTAL	<u>5</u>	<u>91</u>	<u>71</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED

OF BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	MARCH 1ST 1966	12 MONTHS 1965-66	FISCAL YEAR 1964-65
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	-	24	23
POST-HEARING VOTE	2	33	36
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	1	7	8
POST-HEARING VOTE	6	42	53
BALLOTS NOT COUNTED	-	3	1
TOTAL	<u>9</u>	<u>109</u>	<u>121</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF

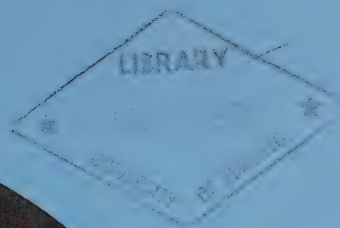
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	MARCH 1ST 1966	12 MONTHS 1965-66	FISCAL YEAR 1964-65
*RESPONDENT UNION SUCCESSFUL	-	1	-
RESPONDENT UNION UNSUCCESSFUL	<u>1</u>	<u>21</u>	<u>14</u>
TOTAL	<u>1</u>	<u>22</u>	<u>14</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.



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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING APRIL 1966

BARGAINING AGENTS CERTIFIED DURING APRIL

NO VOTE CONDUCTED

11230-65-R: LOCAL UNION 46 ORGANIZATION DIVISION UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF CANADA AND THE UNITED STATES (APPLICANT) v. AUTOMATIC FUELS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN OIL BURNER SERVICE AND INSTALLATION WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT SERVICE MANAGER, PERSONS ABOVE THE RANK OF SERVICE MANAGER AND OFFICE STAFF." (13 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 22).

11295-65-R: THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. SKENE CARTAGE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (97 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 30).

11479-65-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. THE BECKER MILK COMPANY LIMITED (RESPONDENT) v. THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101. (30 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 37).

11527-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) v. CANADIA NIAGARA FALLS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(2 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 44).

11533-65-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. K AND E SAND AND GRAVEL (SARNIA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SARNIA, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE STAFF AND PERSONS IN THE EMPLOY OF THE RESPONDENT COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE SARNIA CONSTRUCTION ASSOCIATION AND THE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL UNION 880." (16 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11537-65-R: SHOPMEN'S LOCAL UNION No. 757 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFFILIATED WITH THE AFL-CIO, CLC) (APPLICANT) V. GREAT LAKES STEEL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 786." (39 EMPLOYEES IN THE UNIT).

11538-65-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 30 (APPLICANT) V. ARISTA PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (17 EMPLOYEES IN THE UNIT).

11543-65-R: LOCAL UNION 894 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO-CLC (APPLICANT) V. STARK ELECTRONIC INSTRUMENTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (170 EMPLOYEES IN THE UNIT).

11547-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 (APPLICANT) V. ST. LAWRENCE MECHANICAL CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THAT AREA FORMERLY EMBRACED BY THE COUNTIES OF STORMONT AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(3 EMPLOYEES IN THE UNIT).

11560-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)
V. KEENE CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(3 EMPLOYEES IN THE UNIT).

11562-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)
V. FOUNDATION COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(3 EMPLOYEES IN THE UNIT).

SINCE THE ISSUANCE IN 1964 OF THE MAP INDICATING THE GEOGRAPHIC AREAS SET BY THE CONSTRUCTION INDUSTRY DIVISION IN CERTIFICATION CASES, THE BOARD HAS INCLUDED THE COUNTY OF VICTORIA IN AREA NUMBER ELEVEN.

11565-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)
V. NORTHWESTERN STRUCTURAL STEEL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(3 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 46).

11567-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 527 - (AFL-CIO) (CLC) (APPLICANT) V. CHIABAI BROTHERS MASONRY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SA AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN
(4 EMPLOYEES IN THE UNIT).

11569-65-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. UNIVERSITY OF WINDSOR (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN THE POWER HOUSE AT UNIVERSITY OF WINDSOR, WINDSOR." (5 EMPLOYEES IN THE UNIT).

11570-65-R: UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS (APPLICANT) V. IMPERIAL FOODS (WATFORD) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WATFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (73 EMPLOYEES IN THE UNIT).

11571-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2679 (APPLICANT) V. ESSEX QUALITY KITCHENS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GEORGETOWN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (20 EMPLOYEES IN THE UNIT).

11574-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. HOLLAND HITCH OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (15 EMPLOYEES IN THE UNIT).

11577-65-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, LOCAL 934 (APPLICANT) V. J.I.C. ELECTRIC (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SANDWICH WEST TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

11578-65-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, LOCAL 934 (APPLICANT) V. J.I.C. MACHINE TOOL ELECTRICIANS (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RIVERSIDE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

11580-65-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (APPLICANT) V. HILL BROS. (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(4 EMPLOYEES IN THE UNIT).

11582-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. PYLE-NATIONAL (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CLARKSON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (42 EMPLOYEES IN THE UNIT).

(THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE HEAD SHIPPER IS NOT INCLUDED IN THE BARGAINING UNIT).

11584-65-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. SUPER CITY DISCOUNT FOODS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN BRANTFORD REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER AND OFFICE STAFF." (35 EMPLOYEES IN THE UNIT).

11588-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC. (APPLICANT) V. CENTRAL SUPERMARKETS LIMITED (SUDBURY I.G.A. CARTIER STORE) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT SUDBURY REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT STORE MANAGER AND PERSONS ABOVE THE RANK OF STORE MANAGER AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

11595-66-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. COMMERCIAL INTERIORS AND CABINETS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT THE OWNER MANAGER, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

11596-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. DRESSER ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF."
(15 EMPLOYEES IN THE UNIT).

11597-66-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, LOCAL 1036 (APPLICANT) V. CANADIAN CUSTODIS CHIMNEY CO. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN SAULT STE. MARIE AND IN THE TOWNSHIP OF PRINCE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

11604-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. AUTOMATIC CANTEEN COMPANY OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS CAFETERIA AT THE GENERAL MOTORS DIESEL LIMITED PLANT AT LONDON, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (6 EMPLOYEES IN THE UNIT).

11613-66-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, LOCAL 837 (APPLICANT) V. WM. FORD CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

11630-66-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, LOCAL 749 (APPLICANT) V. ATLAS CONSTRUCTION & ENGINEERING (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 48).

11632-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. DREW BROWN LTD. (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TODOR, GRIMSTHORPE, MARMORA, MADOC, ELZENIE, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, DEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

11637-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. CANAM CONSTRUCTION CORPORATION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

11642-66-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA (APPLICANT) V. PATRICK CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (28 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 50).

11643-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 9 (APPLICANT) V. PAUL PAUZE & FILS LTEE. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 51).

11647-66-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION, LOCAL 506 (APPLICANT) V. DUNKER CONSTRUCTION COMPANY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

11651-66-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. RAY JARVIS ROOFING SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

11660-66-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION No. 837 (APPLICANT) v. A. COPE & SONS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (42 EMPLOYEES IN THE UNIT).

11661-66-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 837 (APPLICANT) v. MARTIN-STEWART CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11677-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. DROPE PAVING AND CONSTRUCTION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

11685-66-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 493 (APPLICANT) v. P. R. CONNOLLY CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11691-66-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) v. RETHATI & CO. LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (23 EMPLOYEES IN THE UNIT).

11692-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. RETHATI & CO. LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

11531-65-R: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (APPLICANT) V. CANADIAN PACIFIC HOTELS LTD., ROYAL YORK HOTEL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT AT ITS PLANT AT THE ROYAL YORK HOTEL IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER. (10 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	6
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	0

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

10906-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ESSEX WIRE CORPORATION (RESPONDENT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL UNION 141 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT INGERSOLL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND THE PLANT NURSE." (50 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	183
NUMBER OF PERSONS WHO CAST BALLOTS	183
NUMBER OF BALLOTS SEGREGATED AND NOT	
COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	180
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	2

11422-65-R: THE SUDBURY AND DISTRICT GENERAL WORKERS' UNION LOCAL 902 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (APPLICANT) V. A. SILVERMAN & SONS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT STORE MANAGERS, FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF STORE MANAGER, FOREMAN OR FORELADY, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (43 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		40
NUMBER OF PERSONS WHO CAST BALLOTS		40
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	26	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	13	

11499-65-R: RCA VICTOR EMPLOYEES' ASSOCIATION (APPLICANT) V. RCA VICTOR COMPANY, LTD. (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT MANAGERS, SUPERVISORS, ADMINISTRATORS AND FOREMEN, PERSONS ABOVE THE RANK OF MANAGER, SUPERVISOR, ADMINISTRATOR OR FOREMAN, SECRETARIES, NURSES, METHODS MEN, PROFESSIONAL ENGINEERS AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS." (17 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		16
NUMBER OF PERSONS WHO CAST BALLOTS		15
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	12	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	3	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING APRIL

NO VOTE CONDUCTED

11272-65-R: PATTERN MAKERS' ASSOCIATION OF HAMILTON & VICINITY (AFFILIATED WITH THE PATTERN MAKERS' LEAGUE OF N.A. (APPLICANT) V. SMART, TURNER, HAYWARD LIMITED (RESPONDENT). (2 EMPLOYEES).

11462-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (APPLICANT) V. CHUBB-MOSLER AND TAYLOR SAFES LTD. (RESPONDENT) V. EMPLOYEES (OBJECTORS). (8 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 34).

11512-65-R: KEMP PRODUCTS EMPLOYEES ASSOCIATION (APPLICANT) V. KEMP PRODUCTS LIMITED (RESPONDENT). (49 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 39).

11513-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL UNION 597 (APPLICANT) V. MOLLENHAUER CONTRACTING COMPANY LIMITED (RESPONDENT). (5 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 40).

11521-65-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. THE NIAGARA PARKS COMMISSION (RESPONDENT). (176 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 41).

11545-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. BURNABY VENETIAN BLINDS LIMITED (RESPONDENT). (5 EMPLOYEES).

11554-65-R: THE HOTEL & RESTAURANT EMPLOYEE'S AND BARTENDER'S INTERNATIONAL UNION, LOCAL 412 A.F. OF L. - C.I.O., - C.L.C. (APPLICANT) V. ALGONQUIN HOTEL (SOO) LIMITED (RESPONDENT). (12 EMPLOYEES).

11555-65-R: THE HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, LOCAL 412 A.F. OF L., - C.I.O., - C.L.C. (APPLICANT) V. THE CANADIAN MOTOR HOTEL (SAULT STE-MARIE) LTD. (RESPONDENT). (16 EMPLOYEES).

11581-65-R: THE HOTEL & RESTAURANT EMPLOYEE'S AND BARTENDER'S INTERNATIONAL UNION, LOCAL 412 A.F. OF L., - C.I.O., - C.L.C. (APPLICANT) V. GRANDVIEW HOTEL (RESPONDENT). (3 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

11197-65-R: UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS (APPLICANT) V. CAMPBELL SOUP COMPANY LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS NEW TORONTO PLANT, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, SECURITY GUARDS, LABORATORY, INSPECTION, TIME, OFFICE AND SALES STAFF AND STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD." (569 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		547
NUMBER OF PERSONS WHO CAST BALLOTS		518
NUMBER OF BALLOTS SEGREGATED AND NOT		
COUNTED	7	
NUMBER OF SPOILED BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	199	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	309	

11255-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. J. R. FERGUSON COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DUNDAS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		28
NUMBER OF PERSONS WHO CAST BALLOTS		28
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	12	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	15	

11299-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. QUEENS BAKERY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN OR FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (16 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		14
NUMBER OF PERSONS WHO CAST BALLOTS		14
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	6	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	8	

11436-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 493 (APPLICANT) v. V. R. EVANS CONSTRUCTION (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING APRIL

11424-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. DILCRANE EQUIPMENT LIMITED (RESPONDENT). (78 EMPLOYEES).

11467-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. UNITED FORMING LIMITED (RESPONDENT). (60 EMPLOYEES).

11585-65-R: LOCAL 280 OF THE HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION. A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. JOCKEY CLUB LIMITED (RESPONDENT). (NO EMPLOYEES).

11590-65-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. OTTAWA VALLEY CRUSHED STONE LTD. (RESPONDENT). (15 EMPLOYEES).

11607-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) v. WILCHAR CONSTRUCTION LIMITED (RESPONDENT). (7 EMPLOYEES).

11614-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. STANDARD PAVING LIMITED (RESPONDENT) v. INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA (INTERVENER). (21 EMPLOYEES).

11633-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. LEBLANC AND ROYALE COMMUNICATIONS TOWERS LTD. (RESPONDENT). (8 EMPLOYEES).

11641-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT)
V. CANADIAN ENGINEERING AND CONTRACTING COMPANY LIMITED (RESPONDENT).
(6 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

DISPOSED OF DURING APRIL

11335-65-R: ROBERT CAMPBELL, ON HIS OWN BEHALF AND ON BEHALF OF THE EMPLOYEES
OF PARRY SOUND GENERAL HOSPITAL (APPLICANT) V. LOCAL 866, OF THE CANADIAN UNION
OF PUBLIC EMPLOYEES (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF PARRY SOUND GENERAL HOSPITAL AT PARRY SOUND, SAVE AND
EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES,
CERTIFIED NURSING ASSISTANT STUDENTS, GRADUATE PHARMACISTS, UNDERGRADUATE
PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL,
SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, CHIEF
ENGINEER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER
WEEK AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (133 EMPLOYEES IN
THE UNIT).

(THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE TERM TECHNICAL
PERSONNEL AS USED ABOVE INCLUDES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS,
PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS,
LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	112
NUMBER OF PERSONS WHO CAST BALLOTS	113
NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	46
NUMBER OF BALLOTS MARKED AGAINST THE RESPONDENT	63

11441-65-R: JACQUES QUENETTE, AND JIM ANGEL REPRESENTING THE EMPLOYEES OF
PEPSI-COLA CANADA LTD. (APPLICANTS) V. LOCAL UNION NUMBER 365, OTTAWA, ONTARIO,
INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY
WORKERS OF AMERICA, AFL-CIO-CLC (RESPONDENT) V. PEPSI-COLA CANADA LTD.
(INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF PEPSI-COLA CANADA LTD., AT OTTAWA, SAVE AND EXCEPT SALES
SUPERVISORS, ROUTE MANAGERS, FOREMEN, PERSONS ABOVE THE RANKS OF SALES SUPERVISOR,
ROUTE MANAGER AND FOREMAN AND OFFICE STAFF." (64 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	64
NUMBER OF PERSONS WHO CAST BALLOTS	65
NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED	2

NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	29
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	34

11451-65-R: MOYER SAND (1965) LIMITED (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE APPLICANT AT RIDGEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(15 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	15
NUMBER OF PERSONS WHO CAST BALLOTS	15
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	4
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	11

11572-65-R: JAMES L. DEE (APPLICANT) V. THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO-CLC, DAIRYWORKERS LOCAL 440 (RESPONDENT). (DISMISSED).

(RE: WILMOT'S DAIRY LIMITED).

(SEE INDEXED ENDORSEMENT PAGE 52).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING APRIL

11599-66-U: NESTLE (CANADA) LTD., CHESTERTVILLE, ONTARIO (APPLICANT) V. UNITED DAIRY & CREAMERY WORKERS, LOCAL NO. 488, CHARTERED BY THE RETAIL, WHOLESALE & DEPARTMENT STORE UNION, AFL-CIO-CLC; AND DONALD SMITH AND GARY CARBINO (RESPONDENTS). (WITHDRAWN).

11602-66-U: NESTLE (CANADA) LTD., CHESTERTVILLE, ONTARIO (APPLICANT) V. DONALD CROSS ET AL (RESPONDENTS). (WITHDRAWN).

11649-66-U: STEEN MECHANICAL CONTRACTORS LIMITED (APPLICANT) V. V. BRYSON AND 33 OTHER EMPLOYEES OF THE APPLICANT (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING APRIL

11486-65-U: BUILDING SERVICE EMPLOYEES' UNION LOCAL 210 (APPLICANT) V. THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR (RESPONDENT). (WITHDRAWN).

11600-66-U: NESTLE (CANADA) LTD., CHESTERVILLE, ONTARIO (APPLICANT) V. UNITED DAIRY & CREAMERY WORKERS, LOCAL NO. 488, CHARTERED BY THE RETAIL, WHOLESALE & DEPARTMENT STORE UNION, AFL-CIO-CLC; AND DONALD SMITH AND GARY CARBINO (RESPONDENTS). (WITHDRAWN).

11603-66-U: NESTLE (CANADA) LTD., CHESTERVILLE, ONTARIO (APPLICANT) V. DONALD CROSS ET AL (RESPONDENTS). (WITHDRAWN).

11622-66-U: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. FIRESTONE TIRE & RUBBER COMPANY OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

11648-66-U: STEEN MECHANICAL CONTRACTORS LIMITED (APPLICANT) V. H. LETESTU, D. MOUSSEAU, D. MURPHY, H. SCHWARZE, J. McNAMARA, R. GAUTHIER (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING APRIL

11484-65-U: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA (COMPLAINANT) V. COOPER-WEEKS LIMITED (RESPONDENT).

11487-65-U: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK & DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. ROYAL CROWN COLA LIMITED (RESPONDENT).

11529-65-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. HANFORD LUMBER AND BUILDING PRODUCTS AND HANFORD LUMBER LIMITED, CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF HANFORD BUILDING PRODUCTS (RESPONDENT).

11551-65-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (COMPLAINANT) V. CANADIA NIAGARA FALLS LIMITED (RESPONDENT).

11553-65-U: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (COMPLAINANT) V. VENEZIA BAKERY (RESPONDENT).

11553-65-U: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, LOCAL 412 A.F. OF L.-C.I.O.-C.L.C. (COMPLAINANT) V. LOCK CITY HOTEL (RESPONDENT).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

11635-66-M: SILVERWOOD DAIRIES, LIMITED, BRANTFORD BRANCH AND SILVERWOOD EMPLOYEES' ASSOCIATION (BRANTFORD BRANCH) (JOINT APPLICANTS). (GRANTED).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING APRIL

11385-65-M: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. FINDLAY KEMP DAIRIES LIMITED; SILVERWOOD DAIRIES, LIMITED, AND RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC: AND ITS LOCAL 440 (RETAIL, WHOLESALE AND DAIRY WORKERS UNION) (RESPONDENTS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SILVERWOOD DAIRIES, LIMITED, EMPLOYED AT AND WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT PLANT PROTECTION EMPLOYEES, OFFICE STAFF, FARM INSPECTOR, CHIEF ENGINEER, ENGINEER-IN-CHARGE AT BRANCHES, FOREMEN, MILK ROUTE FOREMEN, THOSE ABOVE THE RANK OF FOREMAN AND MILK ROUTE FOREMAN, TERRITORY SALESMEN, AND PERSONS HIRED FOR PART-TIME WORKING TWENTY FOUR HOURS OR LESS PER WEEK, AND EMPLOYEES HIRED FOR RELIEF OR SEASONAL WORK, PROVIDED HOWEVER THAT ANY SUCH EMPLOYEE EMPLOYED CONTINUOUSLY FOR A PERIOD OF MORE THAN THREE MONTHS SHALL BE INCLUDED IN THE BARGAINING UNIT, EMPLOYEES HIRED FOR VACATION PERIOD, PROVIDED HOWEVER THAT ANY SUCH EMPLOYEE WHOSE PERIOD OF EMPLOYMENT CONTINUES AFTER OCTOBER 1ST IN ANY YEAR SHALL BE INCLUDED IN THE BARGAINING UNIT."

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

597

NUMBER OF PERSONS WHO CAST BALLOTS

567

NUMBER OF BALLOTS SEGREGATED AND NOT
COUNTED

6

NUMBER OF SPOILED BALLOTS

2

NUMBER OF BALLOTS MARKED IN FAVOUR
OF APPLICANT

154

NUMBER OF BALLOTS MARKED IN FAVOUR
OF RETAIL, WHOLESALE AND DEPARTMENT
STORE UNION, AFL:CIO:CLC: AND ITS
LOCAL 440 (RETAIL, WHOLESALE AND
DAIRY WORKERS UNION)

405

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING APRIL

10823-65-M: CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 157 (APPLICANT) v. CITY OF ST. CATHARINES (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 53).

11400-65-M: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. MUFFLER CORPORATION OF CANADA LIMITED (RESPONDENT).

11556-65-M: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) v. THE WABASSO COTTON COMPANY LIMITED, EMPIRE COTTON DIVISION (RESPONDENT).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

10905-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. NATIONAL STEEL CAR CORPORATION LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 55).

11269-65-R: THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L. - C.I.O., C.L.C. (APPLICANT) v. BABCOCK-WILCOX & GOLDIE-McCULLOCH LIMITED (RESPONDENT). (REQUEST DENIED).

11415-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 506 (APPLICANT) v. 20TH CENTURY MASONRY COMPANY (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 58).

11448-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) v. VILLAGE CONTRACTORS (RESPONDENT) v. BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 60).

11448-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) v. VILLAGE CONTRACTORS (RESPONDENT) v. BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 61)

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 47A

11338-65-M: BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, (AFFILIATED WITH BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION A.F. OF L. C.I.O. C.L.C.) (TRADE UNION) v. THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR (EMPLOYER). (REQUEST DENIED).

INDEXED ENDORSEMENTS - CERTIFICATION

11141-65-R: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (APPLICANT) v. RIVARD CLEANERS LIMITED (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: O. B. SHIME AND F. DAQUINO FOR THE APPLICANT, W. S. COOK AND E. RIVARD FOR THE RESPONDENT, H. DERUSHIE AND MRS. O. SCHMIDT FOR A GROUP OF EMPLOYEES.

DECISION OF J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER F. W. MURRAY: (APRIL 21, 1966).

1. BY A DECISION DATED APRIL 6TH, 1966, THE BOARD FOUND THAT ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE STAFF, DRIVER SALESMEN, RETAIL STORE EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING. IN THE SAME DECISION, THE BOARD DECLARED THAT ETHEL RUSHLOW AND LILLIAN STORY EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

2. THERE WAS FILED WITH THE BOARD A STATEMENT OF DESIRE (HEREINAFTER REFERRED TO AS THE PETITION) EXPRESSING OPPOSITION TO THE INSTANT APPLICATION. IF THE BOARD WERE TO FIND THAT THE PETITION WEAKENED OR QUALIFIED THE EVIDENCE OF MEMBERSHIP FOR THOSE PERSONS WHOSE SIGNATURES APPEAR UPON IT, THERE WOULD REMAIN UNCONTESTED EVIDENCE OF MEMBERSHIP FOR LESS THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE ABOVE DESCRIBED BARGAINING UNIT. IN THIS CIRCUMSTANCE, THE BOARD WOULD DIRECT THE TAKING OF A REPRESENTATION VOTE AMONG THE BARGAINING UNIT EMPLOYEES OF THE RESPONDENT RATHER THAN GRANT OUTRIGHT CERTIFICATION TO THE APPLICANT.

3. THE BOARD ACCORDINGLY MADE INQUIRIES WITH RESPECT TO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITION. THE BOARD ALSO ENTERTAINED THE CHARGES FILED BY THE APPLICANT RELATING TO THE PETITION. MORE PARTICULARLY, THE APPLICANT ALLEGED THAT THE PETITION FILED WITH THE BOARD IN THE PRESENT APPLICATION HAD NO HEADING ON IT WHEN IT WAS BEING CIRCULATED AMONG THE EMPLOYEES AND THAT THE PERSONS CIRCULATING THE PETITION REFUSED TO INFORM CERTAIN EMPLOYEES OF THE PURPOSE AND DESTINATION OF THE PETITION. THE APPLICANT FURTHER ALLEGED THAT ON NOVEMBER 12TH, 1965, ETHEL RUSHLOW, IN THE PRESENCE OF A NUMBER OF EMPLOYEES, STATED THAT IT WOULD BE TOO BAD FOR THE EMPLOYEES WHO STARTED THE UNION AND ALSO THAT MRS. RIVARD, THE PROPRIETOR OF THE RESPONDENT, WOULD SHUT DOWN THE PLANT BEFORE THE UNION COULD BE CERTIFIED.

4. AT THE OUTSET WE WOULD MENTION THAT THE APPLICANT MADE AN EARLIER APPLICATION FOR CERTIFICATION FOR THE SAME UNIT OF EMPLOYEES OF THE RESPONDENT ON NOVEMBER 9TH, 1965. THAT APPLICATION WAS WITHDRAWN BY THE APPLICANT ON NOVEMBER 27TH, 1965 AND THE INSTANT APPLICATION WAS FILED ON NOVEMBER 29TH, 1965. IT IS

CLEAR FROM THE EVIDENCE THAT THE LATTER ALLEGATION OF THE APPLICANT RELATES TO THE CONDUCT OF ETHEL RUSHLOW AT THE TIME THE NOTICE TO THE EMPLOYEES (FORM 5) OF THE FIRST APPLICATION FOR CERTIFICATION WAS POSTED ON THE PREMISES OF THE RESPONDENT.

5. HARRY DERUSHIE AND OLIVE SCHMIDT GAVE EVIDENCE IN SUPPORT OF THE PETITION FILED IN THE INSTANT CASE. THEIR EVIDENCE, WHICH IS CONSISTENT IN ALL ESSENTIAL RESPECTS, IS THAT THEY PREPARED THE HEADING ON THE PETITION AT MRS. SCHMIDT'S HOME. TOGETHER THEY SECURED MOST OF THE SIGNATURES AT THE HOMES OF THE EMPLOYEES ON SUNDAY, DECEMBER 5TH, 1965 (WHICH IS NOT A WORKING DAY) AND ON THE EVENING OF MONDAY, DECEMBER 6TH. THE THREE REMAINING SIGNATURES WERE SECURED OUTSIDE THE RESPONDENT'S PREMISES DURING THE LUNCH PERIOD ON TUESDAY, DECEMBER 7TH. BOTH DERUSHIE AND MRS. SCHMIDT TESTIFIED THAT NO MEMBERS OF MANAGEMENT WERE PRESENT WHEN ANY OF THE SIGNATURES WERE SECURED AND NEITHER OF THEM HAD ANY DISCUSSIONS WITH MANAGEMENT RELATING TO THE APPLICATION FOR CERTIFICATION OR THE PETITION, WITH THE EXCEPTION OF ETHEL RUSHLOW, THE CIRCUMSTANCES OF WHICH WILL BE DEALT WITH LATER. THE EVIDENCE IS THAT DERUSHIE AND MRS. SCHMIDT PREPARED, CIRCULATED AND FILED WITH THE BOARD AN EARLIER PETITION WITH RESPECT TO THE PREVIOUS APPLICATION FOR CERTIFICATION MADE BY THE APPLICANT. THERE IS NO EVIDENCE OF MANAGEMENT PARTICIPATION OR SUPPORT FOR THE EARLIER DOCUMENT.

6. DEALING NOW WITH THE FIRST ALLEGATION OF THE APPLICANT, THERE IS NO EVIDENCE WHATSOEVER TO SUPPORT A FINDING THAT THE PETITION WAS WITHOUT A HEADING AT THE TIME IT WAS CIRCULATED OR THAT ANY EMPLOYEES WERE DENIED INFORMATION AS TO ITS PURPOSE OR DESTINATION. INDEED, THE EVIDENCE CLEARLY SUPPORTS AN OPPOSITE FINDING.

7. OF EVEN GREATER POTENTIAL CONSEQUENCE, HOWEVER, IS THE FACT THAT THE SIGNATURE OF ETHEL RUSHLOW APPEARS AS THE TENTH NAME ON THE PETITION. BOTH DERUSHIE AND MRS. SCHMIDT TESTIFIED THAT THEY SECURED HER SIGNATURE ON THE PETITION ON SUNDAY, DECEMBER 5TH AT HER HOME. THE EVIDENCE SUPPORTS A FINDING, HOWEVER, THAT A SUFFICIENT NUMBER OF EMPLOYEES CLAIMED IN MEMBERSHIP BY THE APPLICANT PLACED THEIR SIGNATURES ON THE PETITION PRIOR TO MRS. RUSHLOW SO THAT IF THE BOARD OTHERWISE FINDS THE PETITION WEAKENS OR QUALIFIES THE EVIDENCE OF MEMBERSHIP SUBMITTED FOR THOSE EMPLOYEES, THERE REMAINS UNCONTESTED EVIDENCE OF MEMBERSHIP FOR LESS THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT. IT IS THEREFORE UNNECESSARY FOR THE BOARD TO CONSIDER WHETHER THE FACT OF MRS. RUSHLOW'S SIGNATURE ON THE PETITION INFLUENCED THE EMPLOYEES WHO SUBSEQUENTLY SIGNED THE DOCUMENT.

8. THE SOLE REMAINING CONSIDERATION IS WHETHER THE CONDUCT OF MRS. RUSHLOW ON NOVEMBER 12TH, 1965 SO INFLUENCED THE EMPLOYEES THAT THE BOARD CANNOT ACCEPT THE PETITION FILED IN THE INSTANT APPLICATION AS REPRESENTING A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES. IN THIS REGARD, WE NOTE THAT THERE IS A CONFLICT BETWEEN THE EVIDENCE OF MRS. RUSHLOW AND THAT OF ANGELINE BEZAIRE WHO HAS CEASED TO BE AN EMPLOYEE OF THE RESPONDENT BUT WHO WAS AN EMPLOYEE AS OF NOVEMBER 12TH, THE DATE OF THE POSTING OF THE NOTICE TO THE EMPLOYEES OF THE APPLICATION FOR CERTIFICATION MADE ON NOVEMBER 9TH, 1965.

9. MISS BEZAIRE TESTIFIED THAT WHEN SHE "PUNCHED IN" BETWEEN 7:00 A.M. AND 8:00 A.M. SHE SAW A GREEN SHEET (FORM 5) POSTED ABOVE THE TIME CLOCK BUT DID NOT TAKE THE TIME TO READ ITS CONTENTS. HER EVIDENCE IS THAT SOME TIME LATER MRS. RUSHLOW STOPPED AT MISS BEZAIRE'S WORK LOCATION AT THE BAGGING DESK. WHILE MISS

BEZAIRE SEEMED SOMEWHAT UNCERTAIN IN HER RECOLLECTION OF THE CONVERSATION THAT TOOK PLACE BETWEEN MRS. RUSHLOW AND HERSELF SHE TESTIFIED THAT MRS. RUSHLOW SAID WORDS TO THE EFFECT THAT IT WAS JUST TOO BAD FOR WHOEVER STARTED THE UNION BUSINESS AND THAT BEFORE THE UNION CAME IN THE PLANT WOULD BE CLOSED DOWN. MISS BEZAIRE'S EVIDENCE IS THAT MRS. RUSHLOW MADE HER REMARKS IN A SUFFICIENTLY LOUD VOICE THAT THEY COULD HAVE BEEN HEARD BY OTHER EMPLOYEES WHO WERE IN THE AREA. MISS BEZAIRE ADMITTED, HOWEVER, THAT SHE DID NOT KNOW WHETHER, IN FACT, ANY OTHER EMPLOYEE DID HEAR THE REMARKS AND SHE FURTHER ADMITTED THAT IF THE EMPLOYEES WERE TALKING AMONG THEMSELVES THEY MAY WELL NOT HAVE HEARD THEM. HER ANSWERS IN REPLY TO QUESTIONS ASKED IN CROSS-EXAMINATION LEAD US TO CONCLUDE THAT THE PLANT HAD COMMENCED OPERATIONS AT THE TIME THE ALLEGED STATEMENTS WERE MADE BY MRS. RUSHLOW AND THAT THE NOISE OF THE MACHINERY WOULD NECESSARILY LESSEN THE LIKELIHOOD OF OTHER EMPLOYEES HEARING THEM. MISS BEZAIRE FURTHER TESTIFIED THAT SHE DID NOT KNOW WHETHER MRS. RUSHLOW HAD MADE THE SAME OR SIMILAR STATEMENTS TO OTHER EMPLOYEES AND THAT SHE (MISS BEZAIRE) HAD NOT MENTIONED HER CONVERSATION WITH MRS. RUSHLOW TO ANY OTHER EMPLOYEE.

10. MRS. RUSHLOW ON THE OTHER HAND TESTIFIED THAT SHE COULD NOT RECALL HAVING ANY CONVERSATION WITH MISS BEZAIRE ON THE DAY ON WHICH THE FORM 5 WAS POSTED WITH RESPECT TO THE EARLIER APPLICATION FOR CERTIFICATION. HER EVIDENCE IS THAT WHEN SHE ARRIVED AT WORK AT ABOUT 8:00 A.M. ON NOVEMBER 12TH, 1965 SHE DID NOT SEE THE FORM 5. AT APPROXIMATELY 9:00 A.M., HOWEVER, SHE SAW A NUMBER OF EMPLOYEES CONGREGATED AROUND THE TIME CLOCK AND WHEN SHE WENT OVER TO SEE "WHAT IT WAS ALL ABOUT" SHE THEN SAW THE FORM 5. SHE TESTIFIED THAT ON THAT OCCASION HER ONLY COMMENT TO THE EMPLOYEES GATHERED AROUND THE TIME CLOCK WAS "I HOPE YOU GIRLS KNOW WHAT YOU ARE DOING". MRS. RUSHLOW'S EVIDENCE IS THAT SHE HAD NO OTHER CONVERSATIONS CONCERNING THE UNION WITH ANY OF THE EMPLOYEES BUT DID ADMIT THAT SHE SIGNED THE PETITION ON DECEMBER 6TH WHEN DERUSHIE AND MRS. SCHMIDT CAME TO HER HOME.

11. LET US ASSUME FOR PURPOSES OF ARGUMENT THAT MRS. RUSHLOW SPOKE TO MISS BEZAIRE ON THE MORNING OF NOVEMBER 12TH, 1965. HAVING REGARD TO THE EVIDENCE BEFORE US AND TAKING INTO ACCOUNT THE ABSENCE OF ANY DIRECT EVIDENCE BY EMPLOYEE WE ARE NOT PREPARED TO FIND THAT ANY OTHER EMPLOYEE HEARD WHATEVER STATEMENTS WERE MADE BY MRS. RUSHLOW. IT IS OF SOME RELEVANCE TO MENTION HERE MISS BEZAIRE'S TESTIMONY THAT SHE DID NOT REPEAT MRS. RUSHLOW'S REMARKS TO ANY OTHER EMPLOYEE. WE WOULD ALSO POINT OUT THAT AS OF NOVEMBER 29TH, 1965, THE DATE OF THE MAKING OF THE INSTANT APPLICATION, MISS BEZAIRE WAS NO LONGER AN EMPLOYEE OF THE RESPONDENT. IN ALL THE CIRCUMSTANCES WE DO NOT FIND THAT MRS. RUSHLOW'S CONDUCT HAD THE EFFECT OF SO INFLUENCING THE EMPLOYEES WHO SIGNED THE PETITION AS TO CAUSE THE BOARD TO DISREGARD THE DOCUMENT. NOW, LET US ASSUME ALSO FOR PURPOSES OF ARGUMENT THAT WE ACCEPT THE EVIDENCE OF MRS. RUSHLOW THAT HER ONLY STATEMENT TO ANY OF THE EMPLOYEES WAS "I HOPE YOU GIRLS KNOW WHAT YOU ARE DOING". WE DO NOT FIND THAT THIS STATEMENT BY ITSELF CONSTITUTES UNDUE INFLUENCE WITHIN THE MEANING OF SECTION 48 OF THE LABOUR RELATIONS ACT. THE BOARD ACCORDINGLY ACCEPTS THE PETITION AS REPRESENTING A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THOSE EMPLOYEES WHO SIGNED IT PRIOR TO MRS. RUSHLOW.

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 1, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS

OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

13. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

14. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

15. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER E. BOYER: (APRIL 21, 1966).

I DISSENT.

HAVING REGARD TO THE CONFLICT IN THEIR EVIDENCE, I ACCEPT THE EVIDENCE OF MISS BEZAIRE OVER THAT OF MRS. RUSHLOW. ACCORDINGLY, I DO NOT ACCEPT ANY OF THE EVIDENCE OF MRS. RUSHLOW. FURTHER, I REJECT THE EVIDENCE OF DERUSHIE THAT HE IS PERSONALLY PAYING ALL OF THE EXPENSES OF THE EMPLOYEES HE CALLED AS WITNESSES. THEREFORE, I AM NOT PREPARED TO ACCEPT THE REMAINDER OF HIS EVIDENCE. IN VIEW OF MY FINDINGS WITH RESPECT TO THE CREDIBILITY OF MRS. RUSHLOW AND DERUSHIE, I WOULD NOT HAVE GIVEN ANY WEIGHT TO THE PETITION AND WOULD HAVE GRANTED OUTRIGHT CERTIFICATION TO THE APPLICANT.

11230-65-R: LOCAL UNION 46 ORGANIZATION DIVISION UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF CANADA AND THE UNITED STATES (APPLICANT) v. AUTOMATIC FUELS LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W. WALSH, D. CLARK, J. CIRASELLA, S. NEWMARCH AND J. WHITEHEAD FOR THE APPLICANT AND G. CHARNEY, S. WEISSMAN AND S. ZALE FOR THE RESPONDENT.

DECISION OF G. W. REED, Q.C., VICE-CHAIRMAN AND BOARD MEMBER G. RUSSELL HARVEY: (APRIL 7, 1966).

1. IN THIS CASE THE APPLICANT UNION HAS APPLIED TO THE BOARD TO BE CERTIFIED FOR "CERTIFIED OIL BURNER SERVICE AND INSTALLATION EMPLOYEES". THE RESPONDENT PROPOSES AN ALL EMPLOYEE UNIT WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL. ACCORDING TO THE LIST OF EMPLOYEES FILED BY THE RESPONDENT, IT HAD THE FOLLOWING CLASSIFICATIONS OF EMPLOYEES IN ITS EMPLOY ON THE DATE OF THE MAKING OF THE APPLICATION: OIL BURNER SERVICE APPRENTICE, OIL BURNER SERVICEMAN, FUEL TRUCK DRIVER, WAREHOUSEMAN AND VEHICLE MAINTENANCE MAN. THERE ALSO APPEARS ON THE LIST A NUMBER OF PERSONS DESCRIBED AS SERVICE SUBCONTRACTORS WHO, THE APPLICANT CLAIMS, ARE EMPLOYEES RATHER THAN SUBCONTRACTORS.

2. THE RESPONDENT IS ENGAGED IN SELLING FUEL OIL. AS PART OF THIS BUSINESS IT MAINTAINS A SERVICE DEPARTMENT FOR THE PURPOSE OF INSTALLING AND MAINTAINING EQUIPMENT SUCH AS OIL BURNERS AND HUMIDIFIERS. THE COMPANY DOES MAINTENANCE WORK ON FURNACES BUT CONTRACTS OUT INSTALLATION OF FURNACES. THE COMPANY DOES ITS OWN CONVERSION FROM A COAL TO AN OIL FURNACE. IT IS NOT QUALIFIED TO DO STEAM WORK. IN CONVERTING A FURNACE FROM COAL TO OIL THE COMPANY INSTALLS THE COMBUSTION CHAMBER AND BURNER AND THE FUEL OIL TANK AND THE PIPING TO THE BURNER, BUT IT SUBCONTRACTS OUT DUCTING, ELECTRICAL WORK AND THE BUILDING OF FIRE WALLS. DEPENDING ON THE SIZE OF THE JOB, IT MIGHT DO INSTALLATION WORK ON THE CEILING. NINETY-NINE PER CENT OF ITS MAINTENANCE AND INSTALLATION WORK IS FOR ITS OWN FUEL OIL CUSTOMERS. THE COMPANY HAS NOT ENGAGED IN NEW CONSTRUCTION WORK FOR SOME YEARS. IN CONNECTION WITH ITS FUEL OIL DELIVERIES THE COMPANY HAS NINE TRUCKS PLUS A PUMP-OUT VEHICLE.

3. A PERSON ENGAGED IN THE BUSINESS OF THE RESPONDENT IS REQUIRED TO BE LICENSED UNDER THE ENERGY ACT, 1964, AND, IN ADDITION, AS OF OCTOBER 15, 1965, ALL OIL BURNER SERVICE AND INSTALLATION EMPLOYEES MUST ALSO BE CERTIFIED UNDER THAT ACT. THE PERSONS AFFECTED BY THIS APPLICATION ARE REGISTERED AS OIL BURNER MECHANICS (CLASS 11).

4. THIS CASE RAISES A NUMBER OF IMPORTANT ISSUES. THE FIRST OF THESE IS THE QUESTION WHETHER THE APPLICATION IS ONE FALLING WITHIN SECTION 92 OF THE LABOUR RELATIONS ACT. TO DO SO THE TRADE UNION APPLYING FOR CERTIFICATION MUST BE ONE THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO THE CONSTRUCTION INDUSTRY AND THE EMPLOYER MUST OPERATE A BUSINESS IN THE CONSTRUCTION INDUSTRY. (SEE SECTION 90 OF THE LABOUR RELATIONS ACT.) THE PRESENT APPLICANT CLEARLY QUALIFIES, BUT DOES THE RESPONDENT COMPANY? ADMITTEDLY, THE MAIN BUSINESS OF THE COMPANY, THAT IS, SELLING FUEL OIL, HAS NOTHING TO DO WITH THE CONSTRUCTION INDUSTRY AS THESE WORDS ARE DEFINED IN SECTION 1(1)(DA) OF THE ACT. HOWEVER, THE FACT THAT THE PRIMARY OR PREDOMINANT PURPOSE OF A BUSINESS IS NOT WITHIN THE CONSTRUCTION INDUSTRY DOES NOT NECESSARILY MEAN THAT ANOTHER ASPECT OF THE BUSINESS IS NOT WITHIN THE CONSTRUCTION INDUSTRY. SEE TOPS MARINA MOTOR HOTEL, 64 C.L.L.C., ¶16,004, O.L.R.B. MONTHLY REPORT, JANUARY 1964, P. 583. THE ASPECT OF THE RESPONDENT'S BUSINESS WITH WHICH WE ARE HERE CONCERNED IS ITS SERVICE DEPARTMENT, WHOSE OPERATIONS HAVE BEEN DESCRIBED ABOVE. WHILE IT IS, PERHAPS, A QUESTION OF DEGREE, WE HAVE DIFFICULTY IN DISTINGUISHING THESE OPERATIONS FROM THOSE OF A PLUMBING OR ELECTRICAL SHOP, BOTH OF WHICH HAVE BEEN FOUND TO FALL WITHIN THE CONSTRUCTION INDUSTRY AT LEAST IN SO FAR AS THEIR ON-SITE OPERATIONS ARE CONCERNED. THE RESPONDENT INSTALLS CERTAIN FIXTURES AND ITS MAINTENANCE WORK INVOLVES REPAIRS OF VARIOUS KINDS TO FIXTURES. WE HAVE COME TO THE CONCLUSION, THEREFORE, THAT WITH RESPECT TO THIS ASPECT OF THE RESPONDENT'S OPERATIONS, IT IS OPERATING A BUSINESS IN THE CONSTRUCTION INDUSTRY IN THAT IT IS ENGAGED IN THE BUSINESS OF CONSTRUCTING, ALTERING AND REPAIRING BUILDINGS OR OTHER WORKS AT THE SITE THEREOF WITHIN THE MEANING OF SECTION 1(1)(DA) OF THE ACT. THE BOARD ALSO FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE ACT.

5. THE NEXT QUESTION THAT ARISES IS THAT CONCERNING THE BARGAINING UNIT. THE APPLICANT CLAIMS IT IS ENTITLED, UNDER SECTION 6(2) OF THE ACT TO A CRAFT UNIT OF CERTIFIED OIL BURNER SERVICE AND INSTALLATION EMPLOYEES. IN SUPPORT THEREOF IT REFERRED THE BOARD TO TWO COLLECTIVE AGREEMENTS WHICH IT HAD WITH THOMAS H. SELBY AND CO. AND WITH JOHN BURTON PLUMBING AND HEATING. THE APPLICANT SUGGESTED THESE

COLLECTIVE AGREEMENTS WERE ON FILE WITH THE BOARD BUT A SEARCH OF OUR FILES INDICATED THIS WAS NOT THE CASE. THE APPLICANT WAS NOTIFIED OF THIS AND IN DUE COURSE FILED ITS CURRENT AGREEMENT WHICH IT HAS WITH THE MECHANICAL CONTRACTORS ASSOCIATION OF TORONTO. WHILE JOHN BURTON PLUMBING AND HEATING DOES APPEAR ON THE LIST OF MEMBERS OF THE ASSOCIATION IN SCHEDULE B TO THE AGREEMENT AND AS SUCH, IS BOUND THEREBY, THOMAS H. SELBY AND CO. DOES NOT. THUS THE EVIDENCE PLACED BEFORE US BY THE APPLICANT IN SUPPORT OF ITS CLAIM TO A CRAFT UNIT IS WITH RESPECT TO ONLY ONE EMPLOYER AND THIS HAS NEVER BEEN HELD TO BE SUFFICIENT TO ESTABLISH THAT "A TRADE UNION ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO" A PARTICULAR SKILL OR CRAFT WITHIN THE MEANING OF SECTION 6(2) OF THE ACT. SEE BEN BRUINSMA AND SONS LIMITED, O.L.R.B. MONTHLY REPORT, FEBRUARY 1964, P. 647. FURTHERMORE WE ARE NOT SATISFIED THAT THE EVIDENCE RELATES TO OIL BURNER SERVICE AND INSTALLATION EMPLOYEES OF THE KIND EMPLOYED BY THE RESPONDENT. THESE PERSONS ARE NOT PLUMBERS. WHILE THE ASSOCIATION AGREEMENT REFERRED TO ABOVE RECOGNIZES THE APPLICANT AS THE BARGAINING AGENT FOR ALL EMPLOYEES OF THE VARIOUS CONTRACTORS BOUND BY IT, "EMPLOYEE" IS DEFINED IN THE AGREEMENT AS "A QUALIFIED LOCAL 46 JOURNEYMAN OR APPRENTICE EMPLOYED BY A CONTRACTOR". JOHN BURTON PLUMBING AND HEATING IS A PIPING CONTRACTOR WHO WE WERE INFORMED DOES FURNACE INSTALLATION AND SERVICE WORK. HOWEVER THERE IS NOTHING IN THE COLLECTIVE AGREEMENT OR IN THE EVIDENCE TO SUGGEST THAT THE AGREEMENT COVERS OR THAT BURTON EMPLOYS PERSONS OTHER THAN JOURNEYMEN PLUMBERS AND APPRENTICES. CERTAINLY THERE IS NOTHING TO SUGGEST THAT HE EMPLOYS OIL BURNER SERVICE MECHANICS OF THE KIND WITH WHICH WE ARE HERE CONCERNED. THUS THE BOARD IS NOT SATISFIED ON THE EVIDENCE BEFORE IT THE AGREEMENT ON WHICH THE APPLICANT RELIES ESTABLISHES ANY CRAFT CLAIM FOR OIL BURNER SERVICE MECHANICS AS SUCH EVEN THOUGH IT DOES COVER JOURNEYMEN PLUMBERS WHO MAY BE QUALIFIED TO DO THE WORK OF AN OIL BURNER SERVICE MECHANIC. IN OUR VIEW THE APPLICANT HAS FAILED TO ESTABLISH ITS CLAIM UNDER SECTION 6(2) OF THE LABOUR RELATIONS ACT.

6. IN COMING TO THIS CONCLUSION WE HAVE NOT OVERLOOKED THE FOLLOWING CASES, REFERRED TO AT THE FIRST HEARING, NAMELY, W.R. TURNER LIMITED, BOARD FILE NO. 11101-56, GRAHAM AND WELLS, BOARD FILE NO. 11102-56, ADAMSON AND DOBBIN, BOARD FILE NO. 1110356, GOODFELLOW AND DOUGHERTY LIMITED, BOARD FILE NO. 11104-56, AND FORD PLUMBING AND HEATING COMPANY LIMITED, BOARD FILE NO. 11105-56, (ALL FIVE CASES ARE REPORTED IN O.L.R.B. MONTHLY REPORT, NOVEMBER 1956, PP. 17-18) IN ALL OF WHICH THE SHEET METAL WORKERS UNION WAS CERTIFIED FOR A UNIT OF JOURNEYMEN SHEET METAL WORKERS, APPRENTICES, HELPERS-IN-TRAINING AND PERSONS ENGAGED IN THE INSTALLATION OF OIL BURNER FURNACES. IN OUR VIEW, ALL THESE CASES STAND FOR IS THAT IF THE PLUMBERS HAD COME IN FOR THEIR STANDARD PLUMBERS CRAFT UNIT THEY MIGHT WELL ARGUE THAT OIL BURNER MECHANICS SHOULD BE INCLUDED IN SUCH A UNIT. THE CASES DO NOT ESTABLISH THAT OIL BURNER SERVICE INSTALLERS OR MECHANICS FORM A CRAFT AS SUCH. HOWEVER, EVEN IF THEY ARE MEMBERS OF A CRAFT WITHIN THE MEANING OF SECTION 6(2), THERE IS NO EVIDENCE BEFORE US, AS WE POINTED OUT ABOVE, THAT THE APPLICANT IS ONE THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH CRAFT.

7. THIS BRINGS US TO THE QUESTION AS TO WHETHER THE BOARD CAN FIND THAT OIL BURNER SERVICE MECHANICS CONSTITUTE A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING UNDER THE PROVISIONS OF SECTION 6(1) RATHER THAN UNDER SECTION 6(2) OF THE ACT. IT IS CLEAR THAT THE BOARD HAS NOT IN THE PAST REGARDED SUCH A GROUP STANDING BY ITSELF AS AN APPROPRIATE BARGAINING UNIT. SEE, FOR EXAMPLE, INTERLAKE FUEL OILS LIMITED, BOARD FILE NO. 12769-57, O.L.R.B. MONTHLY REPORT, JUNE, 1957, P. 37. HOWEVER, WE ARE NOW FACED WITH A NEW CONSIDERATION, NAMELY, THESE MECHANICS MUST NOW BE CERTIFIED UNDER THE PROVISIONS OF THE ENERGY ACT, 1964, AND THIS FACT IS SUFFICIENT IN OUR VIEW TO WARRANT RECONSIDERATION OF PVIOUS POLICIES.

8. IN THE PAST MECHANICS OF THIS KIND EMPLOYED BY COMPANIES ENGAGED IN THE SAME BUSINESS AS THE RESPONDENT HAVE BEEN INCLUDED IN "ALL EMPLOYEE UNITS" COMPRISING, IN THE MAIN, MECHANICS AND SERVICEMEN, FUEL OIL TRUCK DRIVERS AND WAREHOUSEMEN. IN THIS CASE, THEREFORE, THE RESPONDENT QUITE PROPERLY PROPOSED AN ALL EMPLOYEE UNIT. HOWEVER, A RE-APPRAISEMENT OF THE WHOLE SITUATION REVEALS THE FOLLOWING FACTS. THERE APPEARS TO BE LITTLE COMMUNITY OF INTEREST BETWEEN THE SERVICEMEN AND THE FUEL OIL TRUCK DRIVERS AND WAREHOUSEMEN. OIL BURNER MECHANICS, IF EMPLOYED BY PLUMBING AND HEATING FIRMS RATHER THAN BY FUEL OIL FIRMS MAY WELL BE INCLUDED IN CRAFT BARGAINING UNITS ALONG WITH THE CRAFTSMEN AS IN THE SHEET METAL CASES REFERRED TO ABOVE. MOREOVER IN ADDITION TO THE FACT THAT THESE MECHANICS MUST NOW BE CERTIFICATED, THE BOARD HAS RULED THAT THE SERVICE OPERATION OF THE RESPONDENT FALLS WITHIN THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. TRADITIONALLY, ORGANIZATION AND COLLECTIVE BARGAINING IN THE CONSTRUCTION INDUSTRY HAS BEEN ALONG CRAFT LINES AND WHILE OIL BURNER MECHANICS HAVE NOT BEEN BARGAINED FOR AS A CRAFT THEY DO FORM A HOMOGENEOUS GROUP. THE FUEL OIL OPERATIONS OF THE RESPONDENT DO NOT FALL WITHIN THE CONSTRUCTION INDUSTRY AND WERE THE BOARD TO INSIST THAT THE MECHANICS BE INCLUDED IN AN ALL EMPLOYEE UNIT, IT WOULD BE IMPOSSIBLE FOR APPLICATIONS INVOLVING SUCH PERSONS TO BE BROUGHT UNDER THE CONSTRUCTION INDUSTRY SECTIONS. FURTHERMORE, OUR RECORDS INDICATE THAT BY AND LARGE THE TRADE UNION WHICH IN THE PAST HAS BARGAINED FOR THESE MECHANICS HAS BEEN THE TEAMSTERS' UNION. IT IS DIFFICULT TO SEE HOW THIS UNION HAS ANY REAL INTEREST IN THEM. RATHER, BECAUSE OF THE BOARD POLICY RELATING TO ALL EMPLOYEE UNITS, IT WOULD APPEAR THAT THAT UNION HAS BEEN FORCED TO ORGANIZE THE OIL BURNER MECHANICS IN ORDER TO BARGAIN ON BEHALF OF FUEL OIL TRUCK DRIVERS. CONVERSELY, WHILE THERE IS NO QUESTION THAT THE PRESENT APPLICANT UNION HAS A LEGITIMATE INTEREST IN REPRESENTING THESE MECHANICS, IT IS SOMEWHAT RIDICULOUS TO SUGGEST THAT IN ORDER TO DO SO THEY HAVE TO ORGANIZE, AS WELL, WAREHOUSEMEN AND TRUCK DRIVERS. HAVING REGARD, THEN, TO ALL THE ABOVE CONSIDERATIONS, THE BOARD FINDS FURTHER, UNDER THE PROVISIONS OF SECTION 6(1) OF THE ACT, THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN OIL BURNER SERVICE AND INSTALLATION WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT SERVICE MANAGER, PERSONS ABOVE THE RANK OF SERVICE MANAGER AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. WE TURN NOW TO CONSIDER THE EMPLOYMENT STATUS OF SEVEN PERSONS SHOWN ON THE RESPONDENT'S LIST FILED WITH ITS REPLY AS SERVICE SUBCONTRACTORS BUT CLAIMED BY THE APPLICANT TO BE EMPLOYEES OF THE RESPONDENT. THE EVIDENCE ESTABLISHES THAT PERSONS WHO PERFORM SERVICE WORK FOR THE RESPONDENT FALL INTO TWO CATEGORIES: THOSE, ADMITTEDLY, EMPLOYEES OF THE RESPONDENT AND THOSE WHOSE STATUS WE ARE PRESENTLY CONSIDERING AND WHO, FOR THE SAKE OF CONVENIENCE, WE SHALL HEREINAFTER REFER TO AS "SERVICEMEN-OWNERS" BECAUSE, UNLIKE THE "SERVICEMEN-EMPLOYEES", THEY OWN THE SERVICE TRUCKS FROM WHICH THEY OPERATE. IN MANY RESPECTS IT IS DIFFICULT TO DISTINGUISH BETWEEN THE TWO GROUPS. THEIR WORK IS ALLOCATED IN THE SAME MANNER AND BY THE SAME PEOPLE. THEY DO THE SAME WORK IN GENERAL, ARE SUBJECT TO THE SAME DIRECTION AND CONTROL. MEMBERS OF BOTH GROUPS WORK THE SAME DAY-TIME HOURS, APPROXIMATELY 8:00 A.M. TO 5:00 P.M. AND INDIVIDUAL MEMBERS OF BOTH GROUPS ARE ON CALL EACH THIRD NIGHT. THIS NIGHT DUTY SCHEDULE IS MADE UP BY THE COMPANY AND NO DISTINCTION IS MADE BETWEEN SERVICEMEN-EMPLOYEES AND SERVICEMEN-OWNERS. NOR IS

THERE ANY DISTINCTION MADE IN THE WORK ORDER SHEETS AND DAILY REPORT FORMS USED BY THE TWO TYPES OF SERVICEMEN. EVEN AS REGARDS REMUNERATION THERE IS LITTLE DIFFERENCE BETWEEN THE GROUPS. BOTH ARE PAID A FLAT RATE PER SERVICE, CALL NOT EXCEEDING AN HOUR AND ON AN HOURLY RATE THEREAFTER. EACH RECEIVES A FLAT RATE FOR "CLEAN-OUTS" AND A STAND-BY FEE WHEN ON NIGHT DUTY. EACH RECEIVES A SET FEE WHEN REPORTING IN TO REPLACE PARTS USED ON CALLS OR WHEN HAVING TO GO OUT AND PURCHASE PARTS FOR A PARTICULAR JOB. ALL PARTS ARE SUPPLIED BY THE COMPANY TO BOTH GROUPS. MEMBERS OF EACH GROUP ARE SUBJECT TO "CHARGE-BACKS", THAT IS A DOCKING IN WHOLE OR IN PART OF AN AMOUNT OWING TO A SERVICEMAN FOR A CALL BECAUSE ANOTHER SERVICEMAN SUBSEQUENTLY WAS CALLED ON TO DUPLICATE OR CORRECT THE WORK DONE BY THE FIRST. THE ONLY DIFFERENCES BETWEEN THE TWO GROUPS IS THAT THE SERVICEMEN-OWNERS RECEIVE ONE DOLLAR MORE PER CALL AND DO NOT RECEIVE VACATION PAY OR PAY FOR STATUTORY HOLIDAYS. HOWEVER, LIKE THE SERVICEMEN-EMPLOYEES, THEY ARE COVERED BY THE COMPANY FOR WORKMEN'S COMPENSATION AND JOB HAZARD INSURANCE.

10. THERE ARE TWO OTHER DIFFERENCES BETWEEN THE TWO GROUPS. NO DEDUCTIONS FOR INCOME TAX, P.S.I. OR HOSPITALIZATION ARE MADE FOR THE SERVICEMEN-OWNERS AND THE LATTER OWN THE TRUCKS WHICH THEY USE IN THEIR WORK. THE SERVICEMEN-OWNERS ARE RESPONSIBLE FOR THE MAINTENANCE OF THEIR VEHICLES AND INSURANCE THEREON AND THESE ITEMS, INCLUDING DEPRECIATION, ARE DEDUCTED AS EXPENSES ON THEIR INCOME TAX RETURNS. THE COMPANY SUPPLIES THE SERVICEMEN-EMPLOYEES WITH TRUCKS USED BY THEM AND THE COMPANY ASSUMES RESPONSIBILITY FOR THE MAINTENANCE, SERVICING, ETC. OF THESE TRUCKS. ON THE OTHER HAND, MEMBERS OF EACH GROUP OWN THE TOOLS WHICH THEY USE ON THE JOB.

11. HAVING COMPARED THE TWO GROUPS OF SERVICEMEN, THERE ARE CERTAIN OTHER ASPECTS OF THE SERVICEMEN-OWNERS' RELATIONSHIP WITH THE RESPONDENT WHICH MERIT ATTENTION. NONE HAS ANY WRITTEN CONTRACT WITH THE COMPANY. EACH ENTERED INTO HIS DUTIES ON THE BASIS OF LOOSE ORAL ARRANGEMENTS AND THIS NO DOUBT ACCOUNTS FOR SOME OF THE RATHER VAGUE AND UNSURE ANSWERS GIVEN BY THE SERVICEMEN-OWNERS TO THE BOARD'S EXAMINER. THUS, ONE "GUESSES" HE IS A SUB-CONTRACTOR, THREE CONSIDER THEMSELVES AS CONTRACTORS AND NOT EMPLOYEES, TWO CONSIDER THEMSELVES EMPLOYEES, AND ONE CLASSES HIMSELF AS AN "OIL BURNER SERVICEMAN" BUT REFERS TO HIS REMUNERATION AS "WAGES". THERE IS NO QUESTION THAT ALL REGARD THEMSELVES AS BOUND TO BE AVAILABLE FOR ANSWERING CALLS DURING THE REGULAR WORK DAY AND ON THEIR REGULARLY SCHEDULED NIGHT SHIFTS AND, WITH ONE EXCEPTION, ALL IN FACT WORK EXCLUSIVELY FOR THE RESPONDENT IN THE SAME WAY AS SERVICEMEN-EMPLOYEES. THE ONE EXCEPTION IS A PERSONS WHO SPENDS FIVE PER CENT OF HIS TIME DOING SUBCONTRACTING WORK FOR A MANUFACTURING CONCERN. THERE IS NO EVIDENCE TO SUGGEST THAT THIS WORK IS DONE AT TIMES OTHER THAN WHEN ANY SERVICEMAN-EMPLOYEE WOULD BE FREE TO WORK FOR SOMEONE OTHER THAN THE RESPONDENT. ANOTHER SERVICEMAN-OWNER PRESUMES HE COULD WORK FOR OTHERS BUT HAS NOT TIME TO DO SO. ON THE ONE OCCASION THAT HE DID IT WAS FOR A COMPANY "TIED IN" WITH THE RESPONDENT AND THEN ONLY WITH RESPONDENT'S CONSENT. TWO OTHERS WERE TOLD THEY COULD NOT WORK FOR ANYONE ELSE. A FIFTH UNDERSTANDS HE IS TO WORK ONLY FOR THE RESPONDENT AND, IN ANY EVENT, "PRINCIPLE" PREVENTS HIM FROM WORKING FOR ANYONE ELSE. THE SIXTH HAS A "PERSONAL FEELING" THAT THE COMPANY WOULD NOT WANT HIM TO WORK FOR AN OUTSIDER, ALTHOUGH HE WAS NEVER SO TOLD. HE DOES NOT BELIEVE THE COMPANY WOULD ALLOW HIM TO USE THEIR PARTS AND THEN REPLACE THEM. THE REMAINING SERVICEMAN-OWNER WAS NOT TOLD DIRECTLY HE COULD NOT WORK FOR ANOTHER COMPANY, BUT HE DID NOT THINK THE RESPONDENT WOULD APPRECIATE HIS WORKING FOR SOMEONE ELSE BECAUSE THEY HAD ASKED HIM TO COME TO WORK "STRAIGHT" FOR THEM.

WHETHER THE SERVICEMEN-OWNERS DO OR DO NOT HAVE THE RIGHT TO WORK FOR OTHER COMPANIES IT IS CLEAR THAT THEY IN EFFECT WORK FULL TIME FOR THE RESPONDENT IN THE SAME WAY AS THE SERVICEMEN-EMPLOYEES AND IF THEY WERE TO PERFORM WORK FOR ANOTHER COMPANY IT WOULD BE OUTSIDE THEIR REGULAR WORKING HOURS, AGAIN IN THE SAME WAY AS SERVICEMEN-EMPLOYEES.

12. ANOTHER EXAMPLE OF THE RATHER LOOSE ORAL ARRANGEMENTS EXISTING BETWEEN THE RESPONDENT AND THE SERVICEMEN-OWNERS IS THE QUESTION OF HIRING HELPERS. ONE SERVICEMAN-OWNER HIRED A HELPER PART TIME FOR CLEAN-OUTS. ANOTHER "IMAGINES" HE COULD HIRE A HELPER. A THIRD WAS QUITE DEFINITE THAT HE COULD HIRE A HELPER BUT THERE WAS NO NEED TO DO SO. A FOURTH WAS NOT TOLD THAT HE COULD NOT BUT IN ANY EVENT HE COULD NOT AFFORD TO DO SO. TWO OTHERS FELT THEY WOULD HAVE TO GET THE RESPONDENT'S PERMISSION BEFORE HIRING A HELPER.

13. FINALLY THE BOARD NOTES THAT THERE IS APPARENTLY NO UNIFORMITY ON SUCH MATTERS AS THE USE OF THE RESPONDENT'S NAME ON THE SERVICEMEN-OWNERS' TRUCKS, THE WEARING OF RESPONDENT'S UNIFORM AND THE ISSUING OF LOOSE-LEAF BOOKLETS CONTAINING IN ADDITION TO INFORMATION RESPECTING PARTS ETC., MEMORANDA TO SERVICEMEN ON SUCH QUESTIONS AS CHECK-IN TIME, ORDER IN WHICH "CLEAN-OUTS" MUST BE DONE AND WORKING ON SATURDAYS. IT IS NOT WITHOUT SIGNIFICANCE IN OUR VIEW THAT THE RESPONDENT CHOSE NOT TO CALL EVIDENCE WITH RESPECT TO THE SERVICEMEN-OWNERS "RIGHT" TO WORK FOR OTHERS OR HIRE HELPERS ETC.

14. THE BOARD HAS IN A NUMBER OF EARLIER DECISIONS SET OUT THE PRINCIPLES WHICH FOLLOWS IN DETERMINING WHETHER FOR THE PURPOSES OF INDUSTRIAL RELATIONS A PERSON IS AN EMPLOYEE OR AN INDEPENDENT CONTRACTOR. THESE CASES AND PRINCIPLES ARE DISCUSSED IN THE BARON DRYWALL LIMITED CASE, 65 C.L.L.C. ¶16,029, AND NO USEFUL PURPOSE WOULD BE SERVED IN REVIEWING THEM ONCE AGAIN. HOWEVER, IN APPLYING THE TESTS SET OUT IN THE CASES, NAMELY, CONTROL, OWNERSHIP OF TOOLS, CHANCE OF PROFIT AND RISK OF LOSS, IT SHOULD BE NOTED THAT ALL FOUR TESTS MUST BE SATISFACTORILY FULFILLED IN ORDER THAT THE BOARD FIND THAT THE SERVICEMEN-OWNERS ARE INDEPENDENT CONTRACTORS.

15. IN SO FAR AS CONTROL IS CONCERNED, THERE IS OBVIOUSLY LITTLE TO DISTINGUISH BETWEEN THAT EXERCISED BY THE RESPONDENT OVER SERVICEMEN-EMPLOYEES AND SERVICEMEN OWNERS. WHILE IT IS TRUE THAT THE WORK PERFORMED BY BOTH GROUPS IS BY ITS VERY NATURE LARGELY UNSUPERVISED, AND THUS CONTROL OF THE WORK ITSELF BECOMES A SOMEWHAT NEUTRAL FACTOR, IT IS CLEAR THAT THE RESPONDENT RETAINS CONTROL OF THE SERVICEMEN-OWNERS IN SUCH MATTERS AS ALLOCATION OF WORK, HOURS AND TIMES OF WORK, WORK REPORTS AND "CHARGE-BACKS" IN EXACTLY THE SAME FASHION AS IT DOES OVER THE SERVICEMEN-EMPLOYEES.

16. ON THE QUESTION OF OWNERSHIP OF TOOLS, BOTH TYPES OF SERVICEMEN SUPPLY THEIR OWN TOOLS, AS IS APPARENTLY THE CUSTOM IN THE TRADE. THE COMPANY SUPPLIES BOTH GROUPS WITH PARTS FOR USE IN THEIR WORK. ON THE OTHER HAND, THE SERVICEMAN-OWNER SUPPLY AND ARE RESPONSIBLE FOR THE TRUCKS USED BY THEM IN THEIR WORK, WHEREAS THE SERVICEMEN-EMPLOYEES USE COMPANY TRUCKS, WHICH ARE SERVICED AND MAINTAINED BY THE COMPANY.

17. ON THE EVIDENCE IT IS DIFFICULT TO SEE HOW THERE IS ANY REAL CHANCE OF PROFIT. WHILE IT IS TRUE THAT ON SERVICE CALLS THE SERVICEMEN-OWNERS RECEIVE A DOLLAR PER CALL MORE THAN SERVICEMEN-EMPLOYEES, THIS IS THEIR ONLY ADDITIONAL PAYMENT. IN ALL OTHER RESPECTS THEIR REMUNERATION IS BASED ON THE SAME FORMULA

AS THAT USED FOR THE SERVICEMEN-EMPLOYEES. THERE IS NO EVIDENCE TO SUGGEST THAT THE SERVICEMEN-OWNERS BY SPEED OR PERFORMANCE AND REDUCTION OF ERRORS HAVE ANY MORE OPPORTUNITY FOR PROFIT THAN THE OTHER SERVICEMEN. MOREOVER, THE RESPONDENT RETAINS CONTROL OF THE ALLOCATION AND SCHEDULING OF WORK AND AGAIN IN THIS RESPECT THERE IS NO MORE OPPORTUNITY FOR PROFIT THAN THAT ENJOYED BY THE SERVICEMEN-EMPLOYEES. IN OTHER WORDS, THERE IS LITTLE OPPORTUNITY HERE FOR ENTREPRENEURIAL ACTIVITY AS CONTRASTED, SAY, WITH THE SITUATION IN THE CANADA BREAD COMPANY LIMITED CASE, 63 C.L.L.C., ¶16,223, WHERE THE DEALERS NOT ONLY HAD AN OPPORTUNITY OF BUILDING UP THEIR CUSTOMER LIST, BUT COULD SET THEIR OWN PRICES. ALTHOUGH WE HAVE NO EVIDENCE CONTRASTING THE EARNINGS OF THE TWO GROUPS OF SERVICEMEN, IT SEEMS TO US THAT THE PAYMENT OF THE EXTRA DOLLAR PER SERVICE CALL WOULD, IN THE CIRCUMSTANCES UNDER WHICH THE SERVICEMEN-OWNERS ARE REQUIRED TO PERFORM THEIR WORK FOR THE RESPONDENT, DO LITTLE MORE THAN COMPENSATE THEM FOR SUPPLYING THEIR OWN VEHICLES, EVEN TAKING INTO CONSIDERATION THE FACT THAT THEY CLAIM CERTAIN DEDUCTIONS ON THEIR INCOME TAX FOR OPERATIONAL EXPENSES.

18. IN ONE SENSE IT MAY BE SAID THERE IS A RISK OF LOSS PRESENT. THE SERVICEMEN-OWNERS SUPPLY THEIR OWN VEHICLES AND ARE RESPONSIBLE FOR THEIR OPERATION AND MAINTENANCE. THIS IS AN EXPENSE NOT FACED BY THE SERVICEMEN-EMPLOYEES. ON THE OTHER HAND, THE SERVICEMEN-OWNERS RECEIVE ADDITIONAL REMUNERATION AND DEDUCT MAINTENANCE AND OPERATIONAL EXPENSES AND DEPRECIATION FROM THEIR INCOME TAX. WHILE IT IS TRUE THAT IF THE VEHICLE BREAKS DOWN, THE SERVICEMAN-OWNER THEORETICALLY IS UNABLE TO OPERATE, THERE IS EVIDENCE THAT THE COMPANY ASSURED AT LEAST SOME OF THE SERVICEMEN-OWNERS THAT IT WOULD SUPPLY THEM WITH A TRUCK IN THAT EVENTUALITY. AGAIN, THE WORKING ARRANGEMENTS, WHEREBY THE SERVICEMEN-OWNERS WORK IN EFFECT FULL TIME AND ON THE SAME BASIS AS THE SERVICEMEN-EMPLOYEES, TEND TO REDUCE THE RISK OF LOSS. FINALLY, POSSIBLE LOSSES BECAUSE OF "CHARGE-BACKS" OR LOSS OF BUSINESS BY THE RESPONDENT ARE RISKS SHARED BY BOTH GROUPS OF SERVICEMEN. IT SHOULD BE NOTED THAT THERE IS NO EVIDENCE BEFORE THE BOARD THAT THE SERVICEMEN-OWNERS ARE TREATED ANY DIFFERENTLY THAN SERVICEMEN-EMPLOYEES DURING SLACK TIMES. RATHER, THE EVIDENCE IS THAT THE SERVICEMEN-OWNERS WOULD BE OCCUPIED AND WERE EXPECTED TO BE AVAILABLE ON A FULL-TIME BASIS. IN OUR OPINION, THE EVIDENCE DOES NOT SUPPORT THE VIEW THAT THERE IS ANY REAL RISK OF LOSS RESULTING FROM ENTREPRENEURIAL ACTIVITY ON THE PART OF THE SERVICEMEN-OWNERS.

19. COUNSEL FOR THE RESPONDENT ADMITTED AT THE OUTSET OF HIS ARGUMENT THAT WE WERE DEALING IN THIS CASE WITH A "GREY AREA". WHILE THERE ARE CERTAINLY SOME ASPECTS OF THE RELATIONSHIP BETWEEN THE SERVICEMEN-OWNERS AND THE RESPONDENT WHICH, IF TAKEN BY THEMSELVES, MIGHT WELL SUPPORT A FINDING THAT THE SERVICEMEN-OWNERS ARE NOT EMPLOYEES, WHEN THE WHOLE OF THE RELATIONSHIP IS EXAMINED IN THE LIGHT OF OUR CONCLUSIONS ON THE EVIDENCE SET OUT ABOVE AND PARTICULARLY THOSE RESPECTING CONTROL AND CHANCE OF PROFIT WE ARE CONSTRAINED TO FIND THAT IT IS IN THE NATURE OF A CONTRACT OF SERVICE RATHER THAN A CONTRACT FOR SERVICES AND THAT, ACCORDINGLY, THE SERVICEMEN-OWNERS ARE, FOR THE PURPOSES OF THE LABOUR RELATIONS ACT, EMPLOYEES AND NOT INDEPENDENT CONTRACTORS. IN ARRIVING AT THIS CONCLUSION WE HAVE NOT OVERLOOKED THE ARGUMENT THAT THE BOARD SHOULD FIND, AT THE VERY LEAST, THAT TUDOR AND BEDFORD ARE INDEPENDENT CONTRACTORS. WHILE IT IS TRUE THAT BOTH THESE PERSONS SO REGARD THEMSELVES, THEIR RELATIONSHIP WITH THE RESPONDENT DOES NOT DIFFER SUFFICIENTLY FROM THAT OF THE OTHER SERVICEMEN-OWNERS TO WARRANT A FINDING THAT THEY ARE INDEPENDENT CONTRACTORS.

20. IN THE RESULT, THEREFORE, THE BOARD FINDS THAT ON THE DATE OF THE MAKING OF THE APPLICATION THERE WERE THIRTEEN PERSONS IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE EARLIER IN THIS DECISION.

21. THE BOARD FINDS FURTHER THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

22. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER R. W. TEAGLE: (APRIL 7, 1966).

I DISSENT.

THE MAJORITY DECISION SETS OUT THE FACTS AND ARGUMENT IN THIS CASE WITH WHICH I AGREE EXCEPT THAT I WOULD HAVE FOUND THAT THESE SERVICEMEN-OWNERS ARE INDEPENDENT CONTRACTORS AND WOULD EXCLUDE THEM FROM THE UNIT.

11282-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. H. & O. CENTRELESS GRINDING LIMITED (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: LORNE INGLE, AND EARLE CERSON FOR THE APPLICANT, W. S. COOK AND D. HILLIER FOR THE RESPONDENT, AND JAMES G. MCGIBBON FOR A GROUP OF EMPLOYEES.

DECISION OF J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER F. W. MURRAY: (APRIL 26, 1966).

1. THIS IS AN APPLICATION FOR CERTIFICATION. AT THE FIRST HEARING IN THIS MATTER THE APPLICANT OBJECTED TO THE RESPONDENT SEEKING TO INCLUDE WILLIAM FREDERICK AND ALLAN HIEHN IN THE LIST OF EMPLOYEES INCLUDED IN THE PROPOSED BARGAINING UNIT. AN EXAMINER WAS APPOINTED AND, FOLLOWING THE REPORT OF THE EXAMINER, A HEARING WAS HELD TO ENTERTAIN THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO. ON MARCH 22ND, 1966, THE BOARD ISSUED AN ENDORSEMENT OF THE RECORD IN THIS MATTER, SETTING OUT ITS DETERMINATION THAT WILLIAM FREDERICK AND ALLAN HIEHN DID NOT EXERCISE MANAGERIAL FUNCTIONS AND WOULD BE INCLUDED IN THE PROPOSED BARGAINING UNIT. THE MATTER WAS THEN LISTED FOR HEARING ON ALL OTHER ISSUES. AT THE SUBSEQUENT HEARING, THE BOARD CONDUCTED ITS USUAL INVESTIGATION INTO THE ORIGINATION AND CIRCULATION OF A STATEMENT OF DESIRE WHICH HAD BEEN SUBMITTED IN OPPOSITION TO THIS APPLICATION. THE STATEMENT OF DESIRE OR "PETITION" CONTAINED SIGNATURES, INTER ALIA, OF PERSONS FOR WHOM THE APPLICANT CLAIMED MEMBERSHIP AND, IF THE DOCUMENT IS GIVEN FULL WEIGHT, WOULD CAST DOUBT ON A SUFFICIENT PORTION OF THE APPLICANT'S EVIDENCE OF MEMBERSHIP SO THAT THE BOARD WOULD ORDER A REPRESENTATION VOTE. FOLLOWING THIS INVESTIGATION, THE APPLICANT WAS GIVEN AN OPPORTUNITY TO ADDUCE EVIDENCE IN SUPPORT OF CERTAIN ALLEGATIONS IT HAD MADE THAT CERTAIN MEMBERS OF MANAGEMENT HAD COMMITTED UNFAIR LABOUR PRACTICES RELATING TO THIS APPLICATION AND THE PETITION SUBMITTED IN OPPOSITION. IT WAS THE APPLICANT'S CONTENTION THAT BECAUSE OF THESE UNFAIR PRACTICES THE PETITION SHOULD BE GIVEN NO WEIGHT.

2. IT IS NOT NECESSARY TO SET OUT THE EVIDENCE LED ON BEHALF OF THE APPLICANT'S ALLEGATIONS, EXCEPT TO STATE THAT IT REVEALS MERELY THE OPPOSITION OF Mr. D. HILLIER, SON OF ONE OF THE OWNERS OF THE RESPONDENT, AND OF Mr. WILLIAM FREDERICK, AN EMPLOYEE OF LONG-STANDING, PERHAPS REGARDED BY SOME EMPLOYEES AS HAVING MANAGERIAL STATUS, TO UNION ORGANIZATION OF THE RESPONDENT'S EMPLOYEES. IT IS QUITE CLEAR THAT NONE OF THE APPLICANT'S WITNESSES FELT HIMSELF COERCED OR INTIMIDATED BY Mr. HILLIER OR Mr. FREDERICK, NOR COULD WE CONCLUDE THAT EITHER OF THESE PERSONS SOUGHT TO INTIMIDATE OR COERCE ANY EMPLOYEE. FURTHER, THERE IS NO EVIDENCE TO SUGGEST THAT ANY OFFICER OF THE RESPONDENT HAD TO DO WITH THE ORIGINATION OR CIRCULATION OF THE PETITION, OR THAT ANY OF THE EMPLOYEES WHO SIGNED THAT DOCUMENT DID SO OTHERWISE THAN BY HIS OWN DESIRE.

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DECISION OF BOARD MEMBER E. BOYER: (APRIL 26, 1966).

I DISSENT. HAVING REGARD TO ALL OF THE EVIDENCE, I CONCLUDE THAT THE STATEMENT OF DESIRE SUBMITTED IN OPPOSITION TO THIS APPLICATION DOES NOT CONSTITUTE A TRUE EXPRESSION OF THE WISHES OF THOSE EMPLOYEES WHO WERE LED TO SIGN IT AND I WOULD HAVE CONCLUDED THAT THE DOCUMENT DOES NOT CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT. I WOULD HAVE CERTIFIED THE APPLICANT.

11295-65-R: THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. SKENE CARTAGE COMPANY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: DON NICHOLSON AND R. A. GINGERICH FOR THE APPLICANT, B. W. BINNING AND J. FUSCO FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER D. B. ARCHER. (APRIL 25, 1966).

1. THE APPLICANT APPLIED TO BE CERTIFIED ON JANUARY 17TH, 1966, FOR A UNIT OF EMPLOYEES OF THE RESPONDENT.

2. BY LETTER DATED JANUARY 27TH, 1966, THE RESPONDENT ALLEGED THAT THREE EMPLOYEES, MESSRS. WASDELL, FACCHINI AND SHAW, HAD SIGNED MEMBERSHIP CARDS BUT HAD NOT PAID ANY MONIES ON ACCOUNT OF INITIATION FEE. THIS MATTER CAME ON FOR HEARING IN THE FIRST INSTANCE ON JANUARY 31ST, 1966 AT WHICH TIME THE PARTIES WERE ADVISED THAT THE BOARD WOULD CONDUCT ITS USUAL INQUIRIES INTO THE "NON-PAY" ALLEGATIONS.

3. BY LETTER DATED FEBRUARY 9TH, 1966, THE RESPONDENT ALLEGED THAT Mr. DORRANS HAD SIGNED A CARD BUT HAD PAID NO MONEY.

4. BY LETTER DATED FEBRUARY 10TH, 1966, THE RESPONDENT FURTHER ALLEGED THAT Mr. TAYLOR HAD SIGNED A CARD BUT HAD PAID NO MONEY.

5. BY LETTER DATED FEBRUARY 17TH, 1966, THE RESPONDENT WITHDREW ITS ALLEGATIONS WITH RESPECT TO Mr. SHAW BECAUSE HE COULD NOT BE LOCATED.

6. FOLLOWING THE BOARD'S USUAL INQUIRY INTO THE NON-PAY ALLEGATIONS THIS MATTER WAS LISTED FOR CONTINUATION OF HEARING ON MARCH 17TH, 1966.
7. BY LETTER DATED MARCH 15TH, 1966, THE RESPONDENT ALLEGED THAT MR. WHITEHEAD HAD SIGNED A CARD BUT HAD NOT PAID HIS INITIATION FEE AND ADVISED THE BOARD THAT HE WOULD BE AVAILABLE TO TESTIFY AT THE HEARING SCHEDULED FOR MARCH 16TH, 1966.
8. AT THE HEARING MR. TAYLOR TESTIFIED THAT HE SIGNED A CARD ON JANUARY 18TH 1966, BUT THE \$1.00 INITIATION FEE HAD BEEN PAID ON HIS BEHALF TO AN EMPLOYEE NAMED MR. MACNEIL WHO ACTED AS COLLECTOR, BY MR. LITTLE, ANOTHER EMPLOYEE. HE FURTHER TESTIFIED THAT HE FELT HE "OWED \$1.00 TO MR. LITTLE AND INTENDED TO PAY
9. MR. LITTLE TESTIFIED THAT ON THE EVENING OF JANUARY 18TH, 1966, HE HAD GONE, TOGETHER WITH "A COUPLE OF THE BOYS" TO A LOCATION WHERE SOME OF THE RESPONDENT'S EMPLOYEES WERE WORKING, TO SIGN UP SOME MEMBERS. A TOTAL OF EIGHT CARDS WERE SIGNED THAT EVENING BUT SINCE A COUPLE OF THE EMPLOYEES DID NOT HAVE MONEY WITH THEM HE HAD LOANED MONEY TO MR. TAYLOR AND THE OTHER EMPLOYEES WHO HAD NO MONEY AT THE TIME THE CARDS WERE SIGNED. THE WORD "OWES" WAS MARKED ON THE BACK OF THE CARDS OF THE PERSONS TO WHOM MONEY WAS LOANED FOR THE PURPOSE OF IDENTIFYING THEM AS THE PERSONS TO WHOM MR. LITTLE HAD LOANED MONEY. AFTER RETURNING TO THE UNION OFFICE MR. LITTLE MADE A LIST OF THE NAMES OF THE PERSONS TO WHOM HE HAD LOANED MONEY AND THE WORD "OWES" WAS SCRATCHED OUT. MR. LITTLE ACKNOWLEDGE THAT THE MONEY LOANED TO MR. TAYLOR WAS STILL OWING. MR. LITTLE TESTIFIED HOWEVER, THAT HE HESITATED TO RETURN TO THE LOCATION WHERE THE EMPLOYEES WORKED TO COLLECT THE MONEY OWING TO HIM BECAUSE SOME EMPLOYEES HAD BEEN FIRED FOR UNION ACTIVITY AND HE WAS AFRAID THAT IF HE RETURNED TO COLLECT THE MONEY THAT HE TOO WOULD BE DISCHARGED. HE TESTIFIED THAT HE IN FACT WAS SUBSEQUENTLY FIRED BY THE RESPONDENT BUT WAS LATER TAKEN BACK WHEN A COMPLAINT WHICH WAS FILED ON HIS BEHALF PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT WAS SETTLED.
10. MR. DORRANS TESTIFIED THAT HE HAD NOT PAID THE \$1.00 INITIATION FEE AT THE TIME HE SIGNED HIS CARD ON JANUARY 18TH, 1966, BUT THAT \$1.00 HAD BEEN PAID ON HIS BEHALF TO JOHN MARTIN, THE COLLECTOR, BY MR. LITTLE. HE TESTIFIED THAT HE HAD INTENDED TO REPAY THIS AMOUNT. HOWEVER, MR. DORRANS FURTHER TESTIFIED THAT TWO EMPLOYEES, MR. LITTLE AND MR. SIMPSON, HAD ATTENDED AT HIS HOME ON SATURDAY, JANUARY 26TH, 1966, AND ATTEMPTED TO COLLECT THE \$1.00 LOAN BUT WERE INFORMED BY MR. DORRANS THAT HE DID NOT WANT TO BE BOTHERED WITH THE UNION AND HE REFUSED TO REPLY THE LOAN AT THAT TIME. THERE WAS SOME DISCUSSION AT THAT TIME AS TO MR. DORRANS' CHARACTER, HAVING REGARD TO HIS REFUSAL TO REPAY THE DEBT, BUT MR. DORRANS PERSISTED IN HIS REFUSAL. HOWEVER, MR. SIMPSON RE-ATTENDED AT MR. DORRANS' HOME THE FOLLOWING DAY AND FOLLOWING A DISCUSSION IN THE PRESENCE OF MRS. DORRANS, DURING WHICH MR. DORRANS ACKNOWLEDGE THAT HIS CONDUCT WAS THAT OF A GENTLEMAN, MRS. DORRANS REPAID THE \$1.00 ON MR. DORRANS BEHALF.
11. MR. FACCHINI, A DOCK-FOREMAN, TESTIFIED THAT HE HAD SIGNED A CARD ON JANUARY 18TH, 1966, WHEN REQUESTED TO DO SO BY MR. WHYLES, ANOTHER EMPLOYEE. WHEN HE STATED THAT HE HAD NO MONEY MR. LITTLE GAVE \$1.00 ON HIS BEHALF AND MR. FACCHINI AGREED TO REPAY THE MONEY WHEN MR. LITTLE RETURNED TO THE PREMISES WHERE MR. FACCHINI WORKED. ONE WEEK LATER WHEN MR. LITTLE ASKED FOR REPAYMENT OF THE MONEY MR. FACCHINI REFUSED TO PAY BECAUSE HIS FOREMAN HAD ADVISED HIM THAT SINCE

12. THE PARTIES HAVING AGREED TO WAIVE THE BOARD'S PRELIMINARY INQUIRY INTO THE ALLEGATION OF NON-PAY WITH RESPECT TO MR. WHITEHOUSE, MR. WHITEHOUSE TESTIFIED THAT HE SIGNED A CARD ON JANUARY 21ST, 1966, AT THE REQUEST OF AN EMPLOYEE NAMED MR. SNOW. HE FURTHER TESTIFIED THAT HE HAD NO MONEY AT THE TIME OF SIGNING AND MR. SNOW AGREED TO LOAN HIM \$1.00. MR. WHITEHOUSE TESTIFIED THAT HE PROMISED TO REPAY MR. SNOW THE NEXT TIME HE SAW HIM BUT THAT HE HAS NOT SEEN HIM SINCE. HE TESTIFIED THAT WHILE HE STILL OWES MR. SNOW \$1.00, HE DOES NOT CONSIDER THAT HE OWES ANYTHING TO THE UNION.
13. THE PARTIES AGREED THAT ALTHOUGH MR. WASDELL DID NOT APPEAR AT THE HEARING IN ANSWER TO HIS SUMMONS, THE FACTS WITH RESPECT TO MR. WASDELL'S CARD WERE SIMILAR TO THE FACTS CONCERNING THE OTHER CARDS WE HAD INVESTIGATED, IN THAT THE INITIATION FEE HAD BEEN LOANED TO MR. WASDELL. MR. WHYLES, THE COLLECTOR, TESTIFIED THAT MR. LITTLE LOANED THE MONEY TO MR. WASDELL. MR. LITTLE TESTIFIED THAT MR. WASDELL HAD IN FACT REPAID THE MONEY RECENTLY.
14. ALL OF THE COLLECTORS ON THE CARDS IN QUESTION WERE EMPLOYEES OF THE RESPONDENT WHO HAD VOLUNTEERED THEIR SERVICES TO THE APPLICANT UNION. NONE OF THE COLLECTORS IN QUESTION HAD PRIOR EXPERIENCE IN AN ORGANIZING CAMPAIGN AND NONE WERE PAID FOR THEIR SERVICES. AN OFFICER OF THE APPLICANT TESTIFIED THAT SPECIAL INSTRUCTIONS HAD BEEN GIVEN TO THE VOLUNTEER COLLECTORS PRIOR TO THE COMMENCEMENT OF THEIR CAMPAIGN. NO IRREGULARITY WAS BROUGHT TO THE ATTENTION OF THE APPLICANT UNION CONCERNING THE CARDS IN QUESTION AT THE TIME THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS WAS COMPLETED AND THE CARDS WERE FILED WITH THE BOARD.
15. THE APPLICANT SUBMITTED A TOTAL OF 72 MEMBERSHIP DOCUMENTS ON BEHALF OF PERSONS IN A BARGAINING UNIT OF 101 EMPLOYEES.
16. HAVING REGARD TO ALL THE EVIDENCE WE FIND THAT THE INITIATION FEES SUBMITTED TO THE APPLICANT UNION WITH RESPECT TO THE FIVE CARDS IN QUESTION WERE BONA FIDE LOANS MADE TO THE PERSONS ON WHOSE BEHALF THE CARDS WERE SUBMITTED AND ALL OF SUCH PERSONS HAD AGREED AT THE TIME THE LOANS WERE MADE TO REPAY THE MONEY. WHILE THE EVIDENCE INDICATES THAT ONLY TWO OF THE FIVE PERSONS HAD IN FACT VOLUNTARILY REPAID THE MONEY PRIOR TO THE SECOND HEARING IN THIS MATTER WE ARE SATISFIED, WITH RESPECT TO THE LOANS MADE BY MR. LITTLE, THAT HAD MR. LITTLE NOT FELT INTIMIDATED BY THE DISMISSAL OF EMPLOYEES WHO WERE SUBSEQUENTLY REINSTATED AFTER FILING A COMPLAINT UNDER THE PROVISIONS OF SECTION 65 OF THE ACT, ATTEMPTS WOULD HAVE BEEN MADE TO COLLECT THE OTHER LOANS.
17. THE BOARD IS ACCORDINGLY SATISFIED THAT THE APPLICANT HAS NOT ATTEMPTED TO COMMIT A FRAUD ON THE BOARD WITH RESPECT TO ANY OF THE MEMBERSHIP EVIDENCE FILED IN THIS MATTER AND EVEN IF ALL FIVE OF THE CARDS IN QUESTION ARE DISCOUNTED, THE APPLICANT'S MEMBERSHIP POSITION WOULD NOT BE MATERIALLY ALTERED.
18. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.
19. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METRO-POLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

20. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS SATISFIED THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

21. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN: (APRIL 25, 1966).

I DISSENT.

A HEARING BEFORE THE BOARD WAS HELD ON MARCH 17TH TO ENQUIRE INTO THE ALLEGATIONS MADE BY THE RESPONDENT THAT ALTHOUGH WILLIAM JOHN DORRANS, JOHN EDWARD TAYLOR, BRAD WASDELL AND JOHN WHITEHOUSE, EMPLOYEES OF THE RESPONDENT, HAD SIGNED APPLICATION FOR MEMBERSHIP IN THE APPLICANT UNION, THEY HAD NOT PAID ANY MONIES ON ACCOUNT OF INITIATION FEES.

THE EVIDENCE IS CLEAR THAT ALL FIVE OF THESE EMPLOYEES SIGNED APPLICATION FOR MEMBERSHIP CARDS IN THE APPLICANT UNION AND COUNTERSIGNED RECEIPTS. THE ISSUE BEFORE THE BOARD IS WHETHER OR NOT THEY EACH PAID THE REQUIRED INITIATION FEE OF \$1.00 OR IF SUCH MONIES WERE PAID TO THE UNION ON THEIR BEHALF AND WITH THEIR KNOWLEDGE AND CONSENT AT THE TIME OF SIGNING THE CARD AND RECEIPT OR PRIOR TO THE TERMINAL DATE, JANUARY 25TH, 1966.

WILLIAM JOHN DORRANS, IDENTIFIED THE APPLICATION CARD AND RECEIPT WHICH HE SIGNED. IT IS DATED JANUARY 18TH, 1966 AND THE NAME OF JOHN MARTIN APPEARS ON THE CARD AS WITNESS TO DORRANS' SIGNATURES. DORRANS STATED HE DID NOT PAY AT THE TIME OF SIGNING AND NO ARRANGEMENT WAS MADE TO PAY. MARTIN TOLD HIM IT COULD BE TAKEN CARE OF LATER ON.

ROSS SIMPSON CALLED AT DORRANS' HOME ON SUNDAY, FEBRUARY 27TH, AND REQUESTED PAYMENT OF THE \$1.00. DORRANS STATED HE DIDN'T WANT THE UNION. SIMPSON SAID DORRANS WOULD BE A "PRICK" IF HE DIDN'T. DORRANS' WIFE GOT "FED UP" AND PAID THE \$1.00 ON HIS BEHALF. THIS WAS 32 DAYS AFTER THE TERMINAL DATE.

JOHN EDWARD TAYLOR, STATED THAT ALTHOUGH HE HAD SIGNED AN APPLICATION CARD AND COUNTERSIGNED A RECEIPT, HE HAD NOT PAID \$1.00 AT THE TIME OF SIGNING NOR DID HE SEE ANYONE PAY ON HIS BEHALF. THE CARD AND RECEIPT ARE DATED JANUARY 18TH, 1966. HE TOLD THE COLLECTOR, JOSPEH C. MACNEIL, TO COME BACK ON THURSDAY, JANUARY 20TH AND HE WOULD PAY HIM. HE FURTHER TESTIFIED THAT NO ONE HAS ASKED HIM FOR THE \$1.00 SINCE JANUARY 18TH. ANOTHER EMPLOYEE, ARTHUR LITTLE, STATED HE HAD LOANED THE MONEY TO TAYLOR AT THE TIME THE CARD WAS SIGNED AND HE (TAYLOR, PAID IT TO MACNEIL. THIS CONFLICT OF EVIDENCE HAS NOT BEEN RESOLVED.

RE BRAD WASDELL - GEORGE WHYLES, AN EMPLOYEE, STATED THAT HE HAD ACTED AS A COLLECTOR FOR THE UNION. HE SAID HE HAD SIGNED UP BRAD WASDELL AND THAT ARTHUR LITTLE, ANOTHER EMPLOYEE, HAD LOANED THE MONEY TO WASDELL. HE STATED THAT WASDELL HAD RECENTLY REPAID THE \$1.00 TO LITTLE. THIS IS THE SAME ARTHUR LITTLE REFERRED TO IN THE CASE OF JOHN EDWARD TAYLOR IN THE ABOVE PARAGRAPH. IT IS IMPORTANT TO NOTE THAT ALTHOUGH BRAD WASDELL WAS SERVED WITH A SUMMONS TO APPEAR AT THE HEARING, HE DID NOT DO SO NOR DID HE COMMUNICATE WITH THE BOARD AS TO THE REASON FOR HIS NON-APPEARANCE.

FRANK FACCHINI STATED THAT ALTHOUGH HE SIGNED A CARD AND RECEIPT HE DID NOT PAY \$1.00 AT THAT TIME. THE CARD IS DATED JANUARY 18, 1966. HE AGREED THAT IF THEY CAME BACK LATER HE WOULD GIVE THEM \$1.00.

HE SUBSEQUENTLY ASKED HIS FOREMEN IF, BEING ON SALARY, HE HAD TO JOIN THE UNION. THE FOREMAN SAID "No". HE REFUSED TO PAY WHEN THE COLLECTOR CAME BACK AND HASN'T PAID SINCE.

JOHN WHITEHOUSE TESTIFIED THAT HE SIGNED A CARD AND RECEIPT BUT DID NOT PAY \$1.00. THE CARD IS DATED JANUARY 21, 1966.

THE COLLECTOR, J. C. SNOW, SAID THAT HE (SNOW) WOULD PUT THE \$1.00 IN FOR WHITEHOUSE WHO PROMISED TO REPAY SNOW THE NEXT DAY. NO ONE HAS ASKED WHITEHOUSE FOR THE \$1.00 SINCE THAT TIME AND HE HAS NOT PAID.

TO SUM UP, MESSRS. FACCHINI, TAYLOR AND WHITEHOUSE HAVE NEVER PAID THE \$1.00 AS INDICATED ON THE COUNTERSIGNED RECEIPT. MOREOVER, NO ONE HAS REQUESTED TAYLOR OR WHITEHOUSE TO PAY THE \$1.00 SINCE SIGNING A CARD AND RECEIPT IN THE LATTER PART OF JANUARY.

FACCHINI, ALTHOUGH HE AGREED TO PAY LATER, REFUSED TO PAY WHEN SO REQUESTED.

DORRANS STATED HE DID NOT WANT THE UNION. HIS WIFE HOWEVER, PAID \$1.00 ON HIS BEHALF WHEN THE COLLECTOR USED ABUSIVE LANGUAGE IN THEIR HOME.

IN THESE CIRCUMSTANCES, I HAVE GRAVE DOUBTS AS TO THE BONA FIDES OF THE ALLEGED LOANS MADE BY LITTLE TO FACCHINI, WASDELL AND TAYLOR; AND BY SNOW TO WHITEHOUSE. THE IDEA OF A LOAN TO PAY THE INITIATION FEE SHOULD ORIGINATE WITH THE EMPLOYEE APPLYING FOR MEMBERSHIP AND NOT WITH THE PERSON WHO SIGNED HIM UP. THE PAYMENT MADE UNDER DURESS BY DORRANS' WIFE ON HIS BEHALF WAS NOT A VOLUNTARY PAYMENT AS ANTICIPATED UNDER THE BOARD'S POLICY. PROPER AND ADEQUATE ENQUIRIES BY DON NICHOLSON, THE OFFICIAL UNION REPRESENTATIVE WHO SIGNED FORM 9, WOULD HAVE UNCOVERED THE FACTS SURROUNDING THE APPLICATIONS FOR MEMBERSHIP BY THESE PERSONS. MOREOVER, IT WAS NOT UNTIL AFTER THE ALLEGATIONS OF NON-PAY WERE FILED WITH THE BOARD AND THE BOARD'S ENQUIRIES COMMENCED THAT SERIOUS ATTEMPTS WERE MADE TO COLLECT THE \$1.00 FROM THE EMPLOYEES HERE CONCERNED.

FOR THESE REASONS, I WOULD HAVE REFUSED TO ACCEPT THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT AND I WOULD HAVE DISMISSED THE APPLICATION.

11463-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (APPLICANT) v. CHUBB-MOSLER AND TAYLOR SAFES LTD. (RESPONDENT) AND EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: GEO. W. ALLEN AND J. TRESSIDER APPEARING FOR THE APPLICANT, A. A. WHITE, J. V. CUFF AND R. G. CASTLE APPEARING FOR THE RESPONDENT AND CHARLES DUGUAY AND LIONEL BOURQUE, EMPLOYEES, APPEARING ON THEIR OWN BEHALF.

DECISION OF THE BOARD: (APRIL 13, 1966).

1. THE NAME "CHUBB-MOSLER & TAYLOR SAFES LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "CHUBB-MOSLER AND TAYLOR SAFES LTD."
2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (j) OF THE LABOUR RELATIONS ACT.
3. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.
4. IN SUPPORT OF ITS APPLICATION, THE APPLICANT FILED FOUR CERTIFICATES OF MEMBERSHIP SUPPORTED BY A FORM 60, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY. THIS DECLARATION WAS SIGNED BY A BUSINESS AGENT OF THE APPLICANT TRADE UNION.

AT A HEARING HELD BY THE BOARD IN CAMPBELLFORD TO INQUIRE INTO ALLEGATIONS CONTAINED IN STATEMENTS OF DESIRE FILED WITH THE BOARD BY TWO EMPLOYEES OF THE RESPONDENT, IT WAS ESTABLISHED THAT ONE EMPLOYEE FOR WHOM THE UNION FILED A CERTIFICATE OF MEMBERSHIP HAD NOT IN FACT BEEN A MEMBER OF THE UNION SINCE FEBRUARY 28TH, 1963, ON WHICH DATE HE WAS GRANTED AN HONOURABLE WITHDRAWAL CARD FROM THE UNION. IT IS NOTED THAT BY ARTICLE XIX, SECTION 13 (d) OF THE CONSTITUTION OF THE APPLICANT TRADE UNION IT IS PROVIDED "UPON THE ISSUANCE OF A WITHDRAWAL CARD THE HOLDER'S MEMBERSHIP IN THIS ASSOCIATION SHALL AUTOMATICALLY TERMINATE;.....". THE EMPLOYEE IN QUESTION, ONE LIONEL BOURQUE, HAD BEEN A MEMBER OF A MONTREAL LOCAL OF THE APPLICANT TRADE UNION. AT THE TIME OF THIS APPLICATION HE WAS WORKING ON A JOB AT WARKWORTH, ONTARIO. BOURQUE DOES NOT UNDERSTAND ENGLISH AND ALTHOUGH HE SIGNED THE CERTIFICATE OF MEMBERSHIP WHICH WAS FILED BY THE APPLICANT IT IS QUITE CLEAR THAT HE DID NOT UNDERSTAND WHAT HE WAS SIGNING. AMONG OTHER THINGS THE CERTIFICATE STATES THAT BOURQUE IS A MEMBER OF LOCAL 711 (THE MONTREAL LOCAL) OF THE APPLICANT TRADE UNION AND THAT HIS DUES IN THE AMOUNT OF \$8.25 WERE PAID FOR THE MONTH OF JANUARY, 1966. THESE ARE CLEARLY FALSE STATEMENTS. THE UNION REPRESENTATIVE WHO PRESENTED THE CERTIFICATE TO BOURQUE FOR SIGNATURE HAD NO CONVERSATION WITH HIM. BOURQUE SIGNED ON THE ASSURANCE OF A FOREMAN ON THE JOB THAT "IT WAS O.K. TO DO SO." THE CERTIFICATE IN QUESTION WAS NOT SIGNED BY THIS UNION REPRESENTATIVE, BUT BY ANOTHER BUSINESS AGENT. HE IS NOT AN OFFICER OF LOCAL 711 AND WHEN QUERIED AS TO HOW HE COULD SUPPORT THE STATEMENTS CONTAINED IN THE CERTIFICATE STATED THAT HE HAD MADE INQUIRIES BY TELEPHONE OF THE MONTREAL LOCAL. THE FORM 60 FILED BY THE APPLICANT WAS IN TURN SIGNED BY A THIRD PERSON. THE APPLICANT UNION ELECTED NOT TO CALL ANY EVIDENCE TO REBUT THE TESTIMONY GIVEN AT THE HEARING AND FAILED TO SHOW UP AT A SUBSEQUENT HEARING HELD FOR THE PURPOSE OF HEARING ARGUMENT ON THE ISSUES RAISED AT THE CAMPBELLFORD HEARING.

IN OUR VIEW THE ABOVE FACTS DISCLOSE, AT THE VERY LEAST, A LAXNESS ON THE PART OF THE RESPONSIBLE OFFICIALS OF THE APPLICANT UNION OF SUCH NATURE THAT WE ARE UNABLE TO PLACE ANY RELIANCE ON THE OTHER EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT. REFERENCE IS MADE TO VOLKSWAGEN CANADA LTD., O.L.R.B. MONTHLY REPORT, JANUARY 1960, P. 112.

THE APPLICATION IS ACCORDINGLY DISMISSED.

11474-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) v. ZACHARY DE VUONO LIMITED (RESPONDENT) AND BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1 (INTERVENER) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE, J. DILLON AND R. CARTON APPEARING FOR THE APPLICANT, WALLACE FRAM APPEARING FOR THE RESPONDENT AND LLOYD D. CADSBY APPEARING FOR THE INTERVENER AND OBJECTORS.

DECISION OF THE BOARD: (APRIL 4, 1966).

1. AT THE HEARING IN THIS CASE, HELD ON MARCH 16TH, 1966, THE APPLICANT SOUGHT LEAVE TO FILE ALLEGATIONS RESPECTING THE STATUS OF THE INTERVENER, AND FURTHER SOUGHT LEAVE TO FILE ALLEGATIONS THAT THE DOCUMENTARY EVIDENCE FILED IN OPPOSITION TO THE APPLICATION BY EMPLOYEES DID NOT REFLECT THEIR FREE AND VOLUNTARY WISHES. THE MOTION WAS OPPOSED BY COUNSEL FOR THE RESPONDENT AND THE INTERVENER. ALTERNATIVELY, COUNSEL FOR THE INTERVENER ARGUED THAT IF LEAVE WAS GRANTED, THEN THE INTERVENER IN TURN SHOULD BE GRANTED LEAVE TO FILE AN APPLICATION FOR CERTIFICATION AND DOCUMENTARY EVIDENCE IN SUPPORT THEREOF. COUNSEL FOR THE RESPONDENT ALSO ARGUED THAT IF LEAVE WERE GRANTED, THE RESPONDENT SHOULD BE PERMITTED TO FILE A NEW REPLY.
2. IN ITS DECISION OF MARCH 17TH, 1966, THE BOARD RESERVED JUDGMENT ON THESE VARIOUS MOTIONS AND IN ADDITION POSTPONED FURTHER HEARINGS IN THE CASE UNTIL A DECISION WAS REACHED IN VILLAGE CONTRACTORS, BOARD FILE NO. 11448-65-R. BY LETTER, DATED MARCH 23RD, 1966, THE APPLICANT REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF MARCH 17TH, 1966. BY LETTER, DATED MARCH 28TH, 1966, COUNSEL FOR THE INTERVENER INFORMED THE BOARD THAT THE INTERVENER WAS ABANDONING ITS INTERVENTION AND FURTHER THAT THE INTERVENER WAS NO LONGER REPRESENTING EMPLOYEES WHO FILED STATEMENTS OF DESIRE. IN VIEW OF THIS DEVELOPMENT THERE IS NO LONGER ANY NEED FOR THE BOARD TO CONSIDER THE MOTION BY THE APPLICANT FOR LEAVE TO FILE ALLEGATIONS RESPECTING THE STATUS OF THE INTERVENER AND, OF COURSE, THERE IS NO LONGER ANY NEED FOR THE BOARD TO CONSIDER THE REQUEST FOR RECONSIDERATION IN AS FAR AS IT APPLIES TO THE STATUS OF THE INTERVENER.
3. THE INTERVENER IN THIS CASE ALSO INTERVENED IN THE AFOREMENTIONED VILLAGE CONTRACTORS' CASE AND IT HAS INFORMED THE BOARD IN THAT CASE THAT IT IS ALSO ABANDONING ITS INTERVENTION THERE. IN THESE CIRCUMSTANCES THERE IS NO LONGER ANY REASON FOR THE BOARD TO POSTPONE FURTHER HEARINGS IN THIS CASE.
4. WE ARE LEFT THEREFORE WITH THE MOTION BY THE APPLICANT FOR LEAVE TO FILE ALLEGATIONS RESPECTING THE VOLUNTARY NATURE OF THE STATEMENTS OF DESIRE FILED BY EMPLOYEES. THE ARGUMENTS OF BOTH COUNSEL FOR THE RESPONDENT AND COUNSEL FOR THE INTERVENER DEALT WITH THE MOTION AS IT AFFECTED THE ALLEGATIONS WITH RESPECT TO THE STATUS OF THE INTERVENER. IN BRIEF, THE ARGUMENT WAS THAT A REPRESENTATIVE OF THE APPLICANT MUST HAVE BEEN FULLY AWARE OF THE ALLEGATIONS WITH RESPECT TO THE STATUS OF THE INTERVENER EVEN PRIOR TO THE FILING OF THE APPLICATION. EVEN IF THIS IS TRUE, THIS ARGUMENT WOULD NOT APPLY IN THE CASE OF THE STATEMENTS OF OBJECTION FILED BY THE EMPLOYEES.

5. IN ALL THE CIRCUMSTANCES OF THIS CASE WE ARE SATISFIED THAT THE APPLICANT'S MOTION FOR LEAVE TO FILE ALLEGATIONS RESPECTING THE VOLUNTARY NATURE OF THE STATEMENTS OF OBJECTION FILED BY EMPLOYEES SHOULD BE AND IS HEREBY GRANTED. IN VIEW OF THE POSITION TAKEN BY THE INTERVENER IN ITS LETTER OF MARCH 28TH, 1966, AND HAVING REGARD TO THE CONTENTS OF THE RESPONDENT'S REPLY, AND, FURTHER, HAVING REGARD TO THE FACT THAT THE RESPONDENT HAS INFORMED THE BOARD THAT IT IS NOW NECESSARY FOR IT TO "RE-APPRAISE ITS SITUATION", THE BOARD MAKES NO RULING AT THIS TIME WITH RESPECT TO THE RESPONDENT'S MOTION FOR LEAVE TO FILE A FURTHER REPLY.

6. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING.

11479-65-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. THE BECKER MILK COMPANY LIMITED (RESPONDENT) AND THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (INTERVENER) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D. McDERMOTT AND F. W. MURRAY.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, G. HARRISON AND R. WEDGE FOR THE APPLICANT, J. P. SANDERSON, R. LOWE AND A. MAGI FOR THE RESPONDENT, J. SULLIVAN FOR THE INTERVENER, W. J. HEMMERICK, Q.C., FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (APRIL 18, 1966).

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT T. IRVING WHOSE OCCUPATIONAL CLASSIFICATION IS FARM INSPECTOR IS NOT INCLUDED IN THE BARGAINING UNIT.

4. THERE WAS FILED WITH THE BOARD A STATEMENT OF DESIRE (HEREINAFTER REFERRED TO AS THE PETITION) EXPRESSING OPPOSITION TO THE INSTANT APPLICATION. JAMES CONNELLY TESTIFIED THAT HE PREPARED, CIRCULATED AND WITNESSED ALL OF THE SIGNATURES THAT APPEAR ON THE PETITION. NEITHER THE APPLICANT NOR THE RESPONDENT ALLEGES THAT CONNELLY EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. THE APPLICANT, HOWEVER, SUBMITS THAT THE BOARD SHOULD NOT GIVE WEIGHT TO THE PETITION ON THE GROUNDS THAT THE EMPLOYEES WHO SIGNED IT LOOKED UPON CONNELLY AS BEING A MEMBER OF MANAGEMENT AND AS BEING A PERSONS WHO HAS THE POWER TO AFFECT THEIR EMPLOYMENT STATUS.

5. CONNELLY IS A LABORATORY TECHNICIAN IN CHARGE OF QUALITY CONTROL AND SANITATION THROUGHOUT THE PLANT. HE HAS A LABORATORY IN WHICH HE MAKES TESTS OF THE RAW AND PROCESSED MILK PRODUCTS PRODUCED BY THE RESPONDENT. THE OFFICE OF WILLIAM STILLMAN, THE PLANT MANAGER, IS LOCATED IN A CORNER OF THE LABORATORY. HIS OFFICE IS SEPARATED FROM THE LABORATORY BY A COMBINATION WALL BOARD AND GLASS PARTITION. CONNELLY'S DESK IN THE LABORATORY IS LOCATED IMMEDIATELY ADJACENT TO STILLMAN'S OFFICE. THE PLANT OPERATES ON A CONTINUOUS SEVEN DAY WEEK BASIS. STILLMAN AS PLANT MANAGER IS A MEMBER OF MANAGEMENT AND REGULARLY WORKS ON A SCHEDULE OF TWELVE DAYS FOLLOWED BY TWO DAYS OFF. ON THE EVIDENCE, WE FIND THAT CONNELLY PERFORMS THE DUTIES REQUIRED OF STILLMAN DURING STILLMAN'S REGULAR DAYS OFF EVERY TWO WEEKS. THIS INVOLVES THE RESCHEDULING OF THE WORK TIME OF EMPLOYEES AND TEMPORARILY CHANGING THEIR WORK ASSIGNMENTS WHEN REGULARLY SCHEDULED EMPLOYEES ARE ABSENT. WE FIND FURTHER THAT BOTH IN THE ABSENCE AND PRESENCE OF STILLMAN, CONNELLY DOES GIVE INSTRUCTIONS TO EMPLOYEES. AS WELL, THERE IS EVIDENCE THAT ON ONE OCCASION CONNELLY EFFECTIVELY RECOMMENDED THE TRANSFER OF AN EMPLOYEE FROM ONE JOB TO ANOTHER AND THAT CONNELLY INFORMED THE EMPLOYEE CONCERNED OF THE TRANSFER.

6. THE BOARD HAS CAREFULLY CONSIDERED ALL OF THE TESTIMONY CONCERNING CONNELLY'S DUTIES AND RESPONSIBILITIES AND HIS RELATIONSHIP WITH THE OTHER BARGAINING UNIT EMPLOYEES OF THE RESPONDENT. ON THE BASIS OF THAT EVIDENCE, AND HAVING PARTICULAR REGARD TO HIS APPARENT CLOSE ASSOCIATION WITH THE PLANT MANAGER AND THE FACT THAT CONNELLY APPEARS TO FULFIL THE JOB FUNCTIONS OF THE PLANT MANAGER IN HIS ABSENCE, WE FIND THAT CONNELLY EXERCISES A DEGREE OF AUTHORITY WHICH REASONABLY INDUCED THE EMPLOYEES OF THE RESPONDENT TO BELIEVE THAT HE IS A MEMBER OF MANAGEMENT AND HAS THE POWER TO AFFECT THEIR EMPLOYMENT STATUS. (LINK MANUFACTURING CASE (1954) CITED IN FOOTNOTE TO KAYSON RUBBER AND PLASTIC LTD. CASE (1958) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55 -'59, ¶16,128, C.L.S. 76-627). IN LIGHT OF THE ABOVE FINDING IT IS RELEVANT TO MENTION THE RESPONSIVE NATURE OF THE RELATIONSHIP OF EMPLOYEES WITH THEIR EMPLOYER AND THE NATURAL DESIRE OF EMPLOYEES TO WANT TO APPEAR TO IDENTIFY THEMSELVES WITH THE INTERESTS AND WISHES OF THEIR EMPLOYER (SEE PIGOTT MOTORS (1961) LIMITED CASE (1962) C.C.H. CANADIAN LABOUR LAW CASES, VOL. 2, ¶16,264, C.L.S. 76-530). TAKING INTO ACCOUNT THE NATURE OF THE EMPLOYEE-EMPLOYER RELATIONSHIP, THE ACTIVE ROLE OF CONNELLY IN SOLICITING AND SECURING SIGNATURES ON THE PETITION AND THE BELIEF OF THE EMPLOYEES AS TO THE AUTHORITY VESTED IN HIM, IT IS OUR OPINION THAT THE EMPLOYEES WHO SIGNED THE PETITION WERE SO INFLUENCED THAT WE CANNOT ACCEPT THE PETITION AS REPRESENTING A VOLUNTARY EXPRESSION OF THEIR TRUE WISHES (SEE FURNITURE HARDWARE LIMITED CASE (1962) C.C.H. CANADIAN LABOUR LAW CASES (1964), VOL. 2, ¶16,246, C.L.S. 76-866). WE THEREFORE FIND THAT THE PETITION DOES NOT WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS MATTER.

7. IN OUR VIEW OF THE FINDINGS IN THE PRECEDING PARAGRAPH, IT IS NOT NECESSARY FOR THE BOARD TO DEAL WITH THE REMAINING ALLEGATIONS OF THE APPLICANT.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S

RULES OF PROCEDURE.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11512-65-R: KEMP PRODUCTS EMPLOYEES ASSOCIATION (APPLICANT) v. KEMP PRODUCTS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: LEO J. GENT FOR THE APPLICANT, JAMES G. STEELE FOR THE RESPONDENT.

DECISION OF THE BOARD: (APRIL 4, 1966).

1. THIS IS AN APPLICATION FOR CERTIFICATION MADE ON MARCH 10TH, 1966, BY AN ORGANIZATION KNOWN AS KEMP PRODUCTS EMPLOYEES ASSOCIATION. THE APPLICANT FILED WITH THE BOARD A COPY OF A DOCUMENT, THE FIRST 3 PAGES OF WHICH BEAR THE HEADING KEMP PRODUCTS EMPLOYEES ASSOCIATION CONSTITUTION AND THE FOLLOWING 12 PAGES ARE IN THE FORM OF AN UNSIGNED COLLECTIVE AGREEMENT BETWEEN KEMP PRODUCTS LIMITED AND KEMP PRODUCTS EMPLOYEES ASSOCIATION.

2. THE APPLICANT CALLED AS A WITNESS AN OFFICER OF THE APPLICANT WHO TESTIFIED THAT THE APPLICANT WAS ORGANIZED IN MARCH, 1963, AT A MEETING OF EMPLOYEES HELD ON THE COMPANY'S PREMISES WITH THE PERMISSION OF THE RESPONDENT. THE RESPONDENT HAD BEEN INFORMED BY THE EMPLOYEES THAT THE EMPLOYEES WISHED TO USE THE RESPONDENT'S PREMISES TO HOLD A MEETING IN ORDER TO FORM AN EMPLOYEE ASSOCIATION. OFFICERS OF THE APPLICANT WERE ELECTED AT THIS MEETING.

3. FOLLOWING THE MEETING IN MARCH, 1963, THE EMPLOYEES APPROACHED THE RESPONDENT AND REQUESTED THE RESPONDENT TO BARGAIN WITH THE ELECTED REPRESENTATIVE OF THE ASSOCIATION. THE DOCUMENT WHICH WAS FILED AT THE HEARING IN THIS MATTER INCLUDING THE CONSTITUTION AND WHAT PURPORTS TO BE AN UNSIGNED COLLECTIVE AGREEMENT WAS ARRIVED AT FOLLOWING NEGOTIATIONS WITH THE RESPONDENT COMPANY. THE EVIDENCE WAS THAT THE ELECTED REPRESENTATIVES OF THE APPLICANT AND OFFICIALS OF THE RESPONDENT BARGAINED FOR THE TERMS OF BOTH THE CONSTITUTION AND OF THE UNSIGNED COLLECTIVE AGREEMENT. THE DOCUMENT WAS TYPED IN THE OFFICES OF THE RESPONDENT COMPANY.

4. HAVING REGARD TO ALL THE EVIDENCE WE FIND THAT BECAUSE THE APPLICANT'S CONSTITUTION WAS A SUBJECT OF NEGOTIATIONS WITH THE RESPONDENT COMPANY AT THE SAME TIME AS THE PARTIES BARGAINED FOR WHAT APPEARS TO BE AN AGREEMENT COVERING WAGES AND WORKING CONDITIONS, CONSTITUTES PARTICIPATION ON THE PART OF THE RESPONDENT IN THE FORMATION OF THE APPLICANT ASSOCIATION. WE FURTHER FIND THAT THE RESPONDENT, BY CONTRIBUTING TO THE APPLICANT THE FACILITIES TO HOLD THE MEETING AT WHICH THE APPLICANT WAS FORMED, WITH THE KNOWLEDGE THAT THIS WAS THE PURPOSE FOR WHICH THE MEETING WAS HELD, HAS CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO THE APPLICANT.

5. SECTION 10 OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

10. "THE BOARD SHALL NOT CERTIFY A TRADE UNION IF ANY EMPLOYER OR ANY EMPLOYERS' ORGANIZATION HAS PARTICIPATED

IN ITS FORMATION OR ADMINISTRATION OR HAS CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO IT OR IF IT DISCRIMINATES AGAINST ANY PERSON BECAUSE OF HIS RACE, CREED, COLOUR, NATIONALITY, ANCESTRY OR PLACE OF ORIGIN.

6. THE BOARD THEREFORE FINDS THAT IN VIEW OF SUCH PARTICIPATION AND SUPPORT BY THE RESPONDENT THE BOARD IS PROHIBITED BY SECTION 10 OF THE ACT FROM CERTIFYING THE APPLICANT.

7. THIS APPLICATION IS THEREFORE DISMISSED.

11513-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL UNION 597 (APPLICANT) v. MOLLENHAUER CONTRACTING COMPANY LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: FRED BECKSTEAD APPEARING FOR THE APPLICANT AND G. L. MOLLENHAUER APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: (APRIL 5, 1966).

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

3. THIS IS AN APPLICATION FOR CERTIFICATION. ON FEBRUARY 15TH, 1966, THE PRESENT APPLICANT FILED A PREVIOUS APPLICATION FOR CERTIFICATION FOR CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN BOARD AREA #10. ON FEBRUARY 25TH THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE HELD. ON MARCH 3RD, THE APPLICANT IN THE EARLIER CASE REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION. IN ACCORDANCE WITH ITS USUAL PRACTICE IN SUCH CIRCUMSTANCES THE BOARD ENDORSED THE RECORD ON MARCH 4TH, 1966 AS FOLLOWS:

ALTHOUGH THE APPLICANT HAS REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION HEREIN, THE BOARD, FOLLOWING ITS USUAL PRACTICE IN SUCH CASES, DISMISSES THE APPLICATION.

THE ATTENTION OF THE PARTIES IS DRAWN TO THE MATHIAS OUELLETTE CASE, (1955) C.C.H. CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER '55-'59, ¶16,026, C.L.S. 76-485.

IN THE PRESENT CASE THE APPLICANT IS ALSO SEEKING CERTIFICATION FOR CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN BOARD AREA #10. THE JOB SITE IN THIS CASE IS THE SAME AS IN THE EARLIER APPLICATION. IN ITS REPLY THE RESPONDENT RAISED THE FACT OF THE PREVIOUS DISMISSAL AND THE MATTER WAS ACCORDINGLY LISTED FOR HEARING. AT THE OUTSET OF THE HEARING THE APPLICANT'S ATTENTION WAS

DRAWN TO THE MATHIAS OUELLETTE DECISION REFERRED TO IN THE BOARD'S ENDORSEMENT IN THE FIRST CASE. THAT CASE STANDS FOR THE PROPOSITION THAT WHERE A UNION SEEKS LEAVE TO WITHDRAW AN APPLICATION AFTER THE BOARD HAS ORDERED A REPRESENTATION VOTE, AND APPLIES AGAIN FOR CERTIFICATION FOR THE SAME EMPLOYEES WITHIN SIX MONTHS FROM THE DATE WHEN THE FIRST APPLICATION IS DISMISSED "THE ONUS WILL LIE ON THE APPLICANT TO SHOW THAT SPECIAL CIRCUMSTANCES DO EXIST WHICH WOULD WARRANT THE NEW APPLICATION BEING ENTERTAINED AT THAT TIME."

THE APPLICANT WAS REPRESENTED BY ITS BUSINESS REPRESENTATIVE MR. BECKSTEAD. HE INFORMED THE BOARD THAT THE PREVIOUS APPLICATION WAS WITHDRAWN WITH HIS CONSENT BY MR. JENSEN, AN OFFICIAL OF THE APPLICANT LOCAL'S PARENT UNION AND FURTHER THAT THE DECISION TO WITHDRAW CAME AS A RESULT OF A TELEPHONE CONVERSATION BETWEEN MR. JENSEN AND MR. G. L. MOLLENHAUER, AN OFFICER OF THE RESPONDENT. TO SHOW THAT SPECIAL CIRCUMSTANCES EXISTED IN THE PRESENT CASE MR. BECKSTEAD SOUGHT TO INTRODUCE CERTAIN STATEMENTS WHICH HE ALLEGES MR. MOLLENHAUER MADE TO MR. JENSEN. MR. BECKSTEAD WAS NOT PRESENT WHEN THE PHONE CALL WAS MADE AND THESE STATEMENTS ARE THEREFORE STRICTLY HEARSAY AND CANNOT BE ACCORDED WEIGHT IN THE CIRCUMSTANCES OF THIS CASE. IN ANY EVENT MR. MOLLENHAUER DENIES MAKING THE STATEMENTS IN QUESTION. MR. MOLLENHAUER'S ACCOUNT OF WHAT HE SAID TO MR. JENSEN WOULD NOT IN OUR VIEW CONSTITUTE SPECIAL CIRCUMSTANCES.

THE PLAIN FACT OF THE MATTER IS WE HAVE NO KNOWLEDGE AS TO THE REASON WHICH PROMPTED THE WITHDRAWAL IN THE EARLIER CASE. IT MAY HAVE BEEN BECAUSE THE UNION FELT IT WAS NOT WORTH GOING THROUGH A VOTE BECAUSE THE JOB WAS DUE TO CLOSE DOWN. IT MAY ALSO HAVE BEEN BECAUSE THE UNION DID NOT WISH TO RUN THE RISK OF DEFEAT AT THE POLLS. WE DO NOT KNOW. HAVING REGARD TO THE ENDORSEMENT IN THAT EARLIER CASE AND TO THE REPLY AND NOTICE OF HEARING IN THE PRESENT CASE IT IS NOT OPEN TO THE APPLICANT TO SUGGEST THAT IT WAS NOT AWARE OF THE REASON FOR THE HEARING IN THIS CASE. THE APPLICANT SHOULD HAVE HAD MR. JENSEN PRESENT TO TESTIFY IF IT WISHED TO SUPPORT ITS ALLEGATIONS.

IN THE RESULT, THEREFORE, WE MUST FIND THAT THE APPLICANT HAS FAILED TO ESTABLISH THAT SPECIAL CIRCUMSTANCES EXIST WHICH WOULD WARRANT THE APPLICATION BEING ENTERTAINED AT THIS TIME. THE APPLICATION IS ACCORDINGLY DISMISSED.

11521-65-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. THE NIAGARA PARKS COMMISSION (RESPONDENT).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDERMOTT.

APPEARANCES AT THE HEARING: G. O. JONES FOR THE APPLICANT, STEWART S. MACINNES Q.C., MAX T. GRAY AND J. S. WALKER FOR THE RESPONDENT.

DECISION OF THE BOARD: (APRIL 6, 1966).

1. THE NAME "NIAGARA PARKS COMMISSION" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "THE NIAGARA PARKS COMMISSION".

2. THE APPLICANT IS APPLYING TO THE BOARD FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT.

3. THE RESPONDENT SUBMITS THAT IT IS A CROWN AGENCY AS DEFINED BY THE CROWN AGENCY ACT, R.S.O. 1960, CH. 81, AND THAT BY VIRTUE OF SECTION 11 OF THE INTERPRETATION ACT, R.S.O. 1960, CH. 191, IT IS NOT BOUND BY THE LABOUR RELATIONS ACT. THE RESPONDENT ACCORDINGLY ARGUES THAT THE BOARD IS WITHOUT JURISDICTION TO DEAL WITH THE INSTANT APPLICATION. THE RESPONDENT FURTHER SUBMITS THAT THE BOARD DOES NOT EVEN HAVE THE AUTHORITY TO ENTERTAIN A JURISDICTIONAL ISSUE. IN SUPPORT OF ITS SUBMISSION THE RESPONDENT RELIES ON THE COURT OF APPEAL DECISION R. V. ONTARIO LABOUR RELATIONS BOARD, EX P. ONTARIO FOOD TERMINAL BOARD [1963] 2 O.R. 91, IN WHICH LAIDLAW J. A. EXPRESSES THE VIEW (WHICH HE HIMSELF ADMITS MAY BE OBITER) THAT THE BOARD HAS NO RIGHT OR POWER TO MAKE A DETERMINATION ON A QUESTION OF JURISDICTION OR ANY OTHER QUESTION OF PURE LAW RAISED IN A PROCEEDING BEFORE THE BOARD.

4. IN R. V. ONTARIO LABOUR RELATIONS BOARD, EX P. DUNN [1963] 2 O.R. 301, HOWEVER, WHICH DECISION WAS HANDED DOWN SHORTLY AFTER THE ONTARIO FOOD TERMINAL BOARD JUDGMENT (SUPRA) McRUER C.J.H.C. HELD THAT THE BOARD HAS POWER TO ENTERTAIN OBJECTIONS TO ITS JURISDICTION ON CONSTITUTIONAL GROUNDS. THE ISSUE OF THE BOARD'S COMPETENCE TO ENTERTAIN A QUESTION OF JURISDICTION SUBSEQUENTLY WAS RAISED IN THE ARMSTRONG TRANSPORT CASE (BOARD FILE NO. 6596-63-R). THE BOARD'S DECISION IN THAT CASE READS, IN PART, AS FOLLOWS:-

IN OUR VIEW IF THE BOARD ACCEPTS THE ARGUMENT OF COUNSEL FOR THE RESPONDENT, IN EVERY INSTANCE WHEN A QUESTION OF JURISDICTION IS RAISED, BE IT FRIVOLOUS OR OF SUBSTANCE, THE PROCEEDING IMMEDIATELY WOULD BE STAYED. THE PRACTICAL RESULT WOULD BE TO SERIOUSLY IMPEDE THE BOARD IN THE EXERCISE OF ITS POWERS UNDER THE LABOUR RELATIONS ACT. SHOULD A PARTY TO AN APPLICATION RAISE A JURISDICTIONAL ISSUE AND THEN FAIL TO PROCEED TO A COURT OF LAW FOR A DETERMINATION OF THE ISSUE, THE RESULT WOULD BE LENGTHY OR EVEN INDEFINITE DELAY IN THE DISPOSITION OF THE APPLICATION.

THE BOARD AFTER CITING THE EX P. DUNN CASE (SUPRA) FOUND THAT IT WAS COMPETENT TO ENTERTAIN THE OBJECTIONS TO ITS JURISDICTION AND MADE A DETERMINATION ON THAT ISSUE. THE RESPONDENT ARMSTRONG TRANSPORT THEREUPON MADE APPLICATION FOR CERTIORARI AND PROHIBITION IN SO FAR AS THE BOARD PURPORTED TO; DETERMINE THE QUESTION OF ITS JURISDICTION TO ENTERTAIN THE APPLICATION FOR CERTIFICATION. THE DECISION OF HAINES J. IN THE HIGH COURT (RE ARMSTRONG TRANSPORT AND ONTARIO LABOUR RELATIONS BOARD [1964] 1 O.R. 358) READS IN PART AT 359 AS FOLLOWS:

IN MY VIEW, THE ONTARIO LABOUR RELATIONS BOARD HAD THE RIGHT AND DUTY TO ENTERTAIN AND DEAL WITH AN OBJECTION TO ITS JURISDICTION WHEN IT WAS RAISED. HAVING DECIDED IT HAD JURISDICTION, IT SHOULD THEN PROCEED WITH THE APPLICATION BEFORE IT. WHEN THE APPLICATION HAS BEEN DEALT WITH, ANY PARTY THINKING HIMSELF AGGRIEVED BY THE RULING AS TO JURISDICTION CAN THEN APPLY TO THIS COURT BY WAY OF CERTIORARI AND FOR SUCH RELIEF AS MAY SEEM APPROPRIATE. TO DO OTHERWISE WOULD SERIOUSLY HAMPER THE OPERATIONS OF THE BOARD AND DEFEAT THE PURPOSES OF THE STATUTE, ONE OF WHICH IS THE EXPEDITIOUS

SETTLEMENT OF LABOUR MATTERS. FURTHERMORE, IF THE BOARD HAD TO RETIRE UPON THE FILING OF AN OBJECTION TO JURISDICTION, THE UNION WOULD HAVE TO TAKE ON THE BURDEN OF CONTESTING THE EMPLOYER'S APPLICATION TO THE COURT. THEN IF THE COURT HELD THE LABOUR RELATIONS BOARD HAD JURISDICTION THE UNION WOULD HAVE TO RETURN TO THE BOARD FOR THE PURPOSE OF CERTIFICATION. ONE ASKS, "WHAT WOULD HAPPEN IF THE UNION WAS NOT CERTIFIED?" IT WOULD HAVE INVOLVED ITSELF IN CONSIDERABLE EXPENSE AND DELAY TO NO AVAIL. I DO NOT THINK SUCH AN INTERPRETATION IS WITHIN THE SPIRIT AND OBJECT OF THE STATUTE. TO PERMIT THE INTERRUPTION OF A HEARING WHILE ONE PARTY EXERCISES HIS RIGHT TO HAVE THE COURT PASS ON A COLLATERAL MATTER TENDS TO DEFEAT THE PURPOSE OF THE LEGISLATION.

THE APPLICATION TO THE COURT ACCORDINGLY WAS HELD TO BE PREMATURE AND WAS DISMISSED (SEE ALSO RE HAMILTON CONSTRUCTION ASSOCIATION & BUILDERS EXCHANGE AND ONTARIO LABOUR RELATIONS BOARD [1963] 2 O.R. 293).

5. IN A LATER CASE, R. v. ONTARIO LABOUR RELATIONS BOARD, EX P. TAYLOR [1964] 1 O.R. 173, McRuer C.J.H.C., AFTER MAKING REFERENCE TO THE DECISION OF LAIDLAW J. IN THE ONTARIO FOOD TERMINAL BOARD CASE (SUPRA) AT 179 STATES:

... I DO NOT THINK IT WAS BEYOND THE POWERS OF THE LEGISLATURE TO CLOTHE THE LABOUR RELATIONS BOARD WITH JURISDICTION TO MAKE DECISIONS OF LAW INCIDENTAL TO ITS ADMINISTRATIVE DUTIES. OBVIOUSLY THE BOARD MUST DECIDE MANY INCIDENTAL QUESTIONS OF LAW IN THE PERFORMANCE OF ITS ADMINISTRATIVE FUNCTIONS BUT IN SAYING THIS I DO NOT WISH IT TO BE TAKEN THAT I THINK THAT THE BOARD HAS POWER TO MAKE DECISIONS IN LAW WITH RESPECT TO COLLATERAL MATTERS WHICH MAY NOT BE REVIEWED ON CERTIORARI. IN OTHER WORDS, IT CANNOT GIVE ITSELF JURISDICTION BY WRONG DECISIONS IN LAW.

COUNSEL FOR THE RESPONDENT ARGUES THAT THE DECISION IN THE EX P. TAYLOR CASE (SUPRA) IS AUTHORITY FOR THE PROPOSITION THAT THE BOARD DOES NOT HAVE THE AUTHORITY TO MAKE DECISIONS IN LAW WITH REGARD TO COLLATERAL MATTERS. IT IS CLEAR FROM A READING OF THE ABOVE QUOTED PASSAGE, HOWEVER, THAT McRuer C.J.H.C. PLACES NO LIMITATIONS ON THE BOARD'S POWER TO MAKE DECISIONS IN LAW ON COLLATERAL MATTERS, BUT HELD THAT SUCH DECISIONS ARE SUBJECT TO REVIEW ON CERTIORARI.

6. THE IDENTICAL ISSUE AS TO WHETHER THE RESPONDENT IS A CROWN AGENCY WAS RAISED IN THE ONTARIO WATER RESOURCES COMMISSION CASE (BOARD FILE NO. 10141-64-R) IN THAT APPLICATION THE BOARD ENTERTAINED THE ISSUE AND BY A DECISION DATED JUNE 7TH, 1965, DETERMINED THAT THE ONTARIO WATER RESOURCES COMMISSION IS A CROWN AGENCY AND DISMISSED THE CASE. ON AN APPLICATION FOR CERTIORARI, THE HIGH COURT QUASHED THE DETERMINATION OF THE BOARD AND GRANTED THE APPLICANT TRADE UNION'S REQUEST FOR AN ORDER OF MANDAMUS REQUIRING THE BOARD TO PROCEED AND DETERMINE THE APPLICATION. THE COURT OF APPEAL, HOWEVER, QUASHED THE DECISION OF THE HIGH COURT AND RESTORED THE BOARD'S DECISION. THE DECISIONS OF THE HIGH COURT AND THE COURT OF APPEAL WERE GIVEN ORALLY AND ARE UNREPORTED. IT IS NOTEWORTHY, HOWEVER, THAT THERE IS

NOT THE SLIGHTEST SUGGESTION THAT THE BOARD WAS NOT COMPETENT IN THE FIRST INSTANCE TO MAKE A DETERMINATION AS TO WHETHER THE RESPONDENT IS A CROWN AGENCY. ALSO IT IS MANIFEST THAT THE MATTER IS ONE WHICH IS REVIEWABLE ON CERTIORARI.

7. THE BOARD ACCORDINGLY FINDS THAT IT IS COMPETENT TO ENTERTAIN THE OBJECTIONS TO ITS JURISDICTION RAISED BY THE RESPONDENT.

8. DEALING NOW WITH THE QUESTION OF THE BOARD'S JURISDICTION, IN SUMMERS V. THE NIAGARA PARKS COMMISSION AND NIAGARA-ON-THE-LAKE GOLF CLUB 1945 O.R. 326, HOPE J. AFTER CITING THE JUDGMENT OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL IN INTERNATIONAL RAILWAY COMPANY V. NIAGARA PARKS COMMISSION 1941 A.C. 328, HELD THAT THE NIAGARA PARKS COMMISSION IS AN AGENT OF THE CROWN. THIS FINDING WAS UPHELD BY THE ONTARIO COURT OF APPEAL (1945 O.R. 802). SECTION 2 OF THE CROWN AGENCY ACT (SUPRA) PROVIDES THAT A CROWN AGENCY FOR ALL PURPOSES IS AN AGENT OF HER MAJESTY, AND SECTION 11 OF THE INTERPRETATION ACT (SUPRA) PROVIDES THAT NO ACT AFFECTS THE RIGHT OF HER MAJESTY UNLESS IT IS EXPRESSLY STATED THAT HER MAJESTY IS BOUND BY THE ACT. THE BOARD THEREFORE FINDS THAT THE RESPONDENT IS NOT BOUND BY THE LABOUR RELATIONS ACT AND THAT THE BOARD IS WITHOUT JURISDICTION TO FURTHER ENTERTAIN THE APPLICATION.

9. THE APPLICATION, ACCORDINGLY, IS TERMINATED.

11527-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT)
V. CANADIA NIAGARA FALLS LIMITED (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q. C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W. HAGUE APPEARING FOR THE APPLICANT AND T. O. OLIVER, C. CHAFFEY AND W. B. SMITH APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: (APRIL 5, 1966).

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

2. THE RESPONDENT IS ENGAGED IN CONSTRUCTING A MODEL VILLAGE, SAID TO BE THE FIRST OF ITS KIND IN NORTH AMERICA, ON A 17 1/2-ACRE SITE AT OR NEAR NIAGARA FALLS. THE "VILLAGE" IS BEING DEVELOPED BOTH AS A CENTENNIAL PROJECT AND AS A TOURIST ATTRACTION IN WHICH WILL BE DISPLAYED 1/24 SCALE MODELS ON A LANDSCAPED SETTING. THE MODELS ARE BEING BUILT IN A FACTORY IN TORONTO. SEVEN AND ONE-HALF ACRES WILL BE USED AS A PARKING LOT WHICH WILL BE SEPARATED FROM THE DISPLAY BY AN ADMINISTRATION BUILDING CURRENTLY UNDER CONSTRUCTION. THE DISPLAY IS DESIGNED TO MAKE A CULTURAL CONTRIBUTION TO THE COMMUNITY AND ALSO TO REALIZE A PROFIT.

THE RESPONDENT HAS A SMALL STAFF ON SITE AND THIS GROUP WILL ULTIMATELY BE CONCERNED WITH THE HORTICULTURAL END OF THE OPERATION. BY AND LARGE, HOWEVER, ALL OF THE WORK, INCLUDING THE WORK ON THE ADMINISTRATION BUILDING, HAS BEEN AND WILL CONTINUE TO BE CONTRACTED OUT. THERE IS ONE EXCEPTION TO THIS. ONE OF THE MODELS CONSISTS OF A WORKING MODEL OF THE WELLAND CANAL, ONE HUNDRED AND FORTY-FOUR FEET

IN LENGTH. WHEN COMPLETED IT WILL OPERATE ON A ONE-HALF HOUR CYCLE OF ONE SHIP UP AND ONE SHIP DOWN THE CANAL. UNLIKE MOST OF THE OTHER MODELS WHICH WILL SIMPLY REST ON THE GROUND (WITH SUITABLE LANDSCAPING), THE CANAL IS INCORPORATED INTO THE SITE ITSELF ALONG WITH MINIATURES OF AT LEAST SOME OF THE GREAT LAKES. APPARENTLY THE RESPONDENT WAS UNABLE TO SUB-CONTRACT OUT WORK ON THE CANAL AND ACCORDINGLY HIRED TWO CARPENTERS TO DO THE JOB. THEY BEGAN WORK APPROXIMATELY SIXTEEN WEEKS PRIOR TO THE DATE OF THE MAKING OF THIS APPLICATION. ONE OF THE CARPENTERS IN QUESTION DESCRIBED THE WORK AS VERY "DELICATE" CARPENTRY WORK.

BY MARCH 15TH, THE DAY OF THE MAKING OF THE APPLICATION, THE ONLY WORK THAT REMAINED TO BE DONE ON THE CANAL WAS STRIPPING OF FORMS AND POSSIBLE MODIFICATIONS ONCE THE MACHINERY WAS INSTALLED. THE RESPONDENT DID NOT WANT TO LOSE THE TWO CARPENTERS AND SO ON EITHER THE 15TH OR 16TH OF MARCH THEY WERE ASSIGNED TO DO CERTAIN CARPENTRY WORK ON THE ADMINISTRATION BUILDING. FOR REASONS WITH WHICH WE ARE NOT HERE CONCERNED, THIS WORK TERMINATED ON THE 18TH OF MARCH. ON A PREVIOUS OCCASION ONE OF THE CARPENTERS DID SOME WORK ON THE ADMINISTRATION BUILDING AS WELL. WHEN WORKING ON THE CANAL MODEL, THE CARPENTERS WERE ASSISTED FROM TIME TO TIME BY TWO LABOURERS IN THE EMPLOY OF THE RESPONDENT.

IT SEEMS CLEAR ON THE ABOVE FACTS THAT THE RESPONDENT IS ENGAGED IN CONSTRUCTING BUILDINGS, STRUCTURES, CANALS OR OTHER WORKS AT THE SITE THEREOF WITHIN SECTION 1 (1) (DA) OF THE LABOUR RELATIONS ACT. THE ONLY QUESTION THAT REALLY ARISES IS WHETHER THE RESPONDENT IS A BUSINESS THAT IS SO ENGAGED. THE RESPONDENT ARGUES THAT IT IS IN THE SAME POSITION AS A PERSON WHO WANTS A HOUSE BUILT AND WHO ARRANGES WITH A CONTRACTOR TO BUILD IT. HOWEVER SUCH A PERSON WOULD NOT BE AN EMPLOYER AND FURTHERMORE WOULD NOT BE ENGAGED IN A BUSINESS. IN CONTRAST TO THIS THE RESPONDENT IN THIS CASE IS AN EMPLOYER AND IS CERTAINLY ENGAGED IN A BUSINESS VENTURE EVEN THOUGH AT THE MOMENT IT IS NOT MAKING ANY PROFIT. THIS, IT HOPES, WILL COME IN THE FUTURE. MOREOVER, THE FACT THAT THE CONSTRUCTION END OF THE VENTURE WILL BE SUBSEQUENTLY REPLACED BY A DIFFERENT TYPE OF OPERATION DOES NOT MEAN THAT DURING THE PERIOD OF CONSTRUCTION THE RESPONDENT IS NOT ENGAGED IN OPERATING A BUSINESS IN THE CONSTRUCTION INDUSTRY. THIS TYPE OF SITUATION WAS CANVASSED BY THE BOARD IN TOPS MARINA MOTOR HOTEL, 64 C.L.L.C., ¶16,004, O.L.R.B. MONTHLY REPORT, JANUARY 1964, P. 583. IN ESSENCE WE CAN SEE NO DISTINCTION IN PRINCIPLE BETWEEN THAT CASE AND THE PRESENT CASE. HAVING REGARD, THEREFORE, TO ALL THE ABOVE CONSIDERATIONS, THE BOARD FINDS FURTHER THAT THIS IS AN APPLICATION FALLING WITHIN SECTION 92 OF THE LABOUR RELATIONS ACT.

3. THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMEN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

5. THE BOARD NOTES THAT EVEN IF THIS APPLICATION HAD BEEN FOUND NOT TO FALL

UNDER THE CONSTRUCTION INDUSTRY SECTIONS OF THE LABOUR RELATIONS ACT, THE APPLICANT WOULD NEVERTHELESS HAVE BEEN ENTITLED TO CERTIFICATION, ALTHOUGH PERHAPS FOR A DIFFERENT AREA.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11565-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. NORTHWESTERN STRUCTURAL STEEL LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (APRIL 6, 1966).

1. THE APPLICANT FILED A DULY COMPLETED FORM 59, STATEMENT ON STATUS OF TRADE UNION, CONSTRUCTION INDUSTRY. THE APPLICANT ALSO FILED THREE APPLICATIONS FOR MEMBERSHIP ACCOMPANIED BY RECEIPTS. THE APPLICATIONS ARE SIGNED BY THE EMPLOYEES AND THE RECEIPTS ARE COUNTERSIGNED AND INDICATE THAT A PAYMENT OF \$1.00 HAS BEEN MADE WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE MONEY WAS COLLECTED BY ONE PERSON. THE APPLICANT FILED A DULY COMPLETED FORM 60, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

2. THE RESPONDENT FILED A REPLY WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE, AND SUBSEQUENTLY FILED WITH THE EXAMINER AN AGREED LIST OF EMPLOYEES CONTAINING THREE NAMES AND SPECIMEN SIGNATURES.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

4. THE RESPONDENT IN ITS REPLY TOOK THE POSITION THAT IT WAS NOT IN THE CONSTRUCTION INDUSTRY, THAT IT HAD NO EMPLOYEES IN THE BARGAINING UNIT PROPOSED AND THAT THERE WAS NO APPROPRIATE BARGAINING UNIT. ACCORDINGLY, ON APRIL 1, 1966 AN EXAMINER WAS AUTHORIZED "TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT, ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT AND ON THE NATURE OF THE RESPONDENT'S OPERATIONS". ON APRIL 4, 1966 THE EXAMINER MET WITH THE PARTIES IN PORT ARTHUR AND THERE RESULTED THEREFROM THE FOLLOWING WRITTEN AGREEMENT SIGNED BY THE PARTIES:

"THE RESPONDENT HEREWITH STIPULATES IT HAD IN ITS EMPLOY THREE PERSONS NAMELY: . . . WHO WERE EMPLOYED IN THE BARGAINING UNIT AS DESCRIBED BY THE APPLICANT IN ITS APPLICATION AS OF MARCH 24TH, 1966."

HAVING REGARD TO THE NATURE OF THE RESPONDENT'S REPLY, AND TO THE TERMS OF THE EXAMINER'S AUTHORIZATION, THE BOARD CONCLUDES THAT THE RESPONDENT HAS WAIVED THE OBJECTIONS WHICH WERE RAISED IN THE REPLY.

5. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

6. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11579-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. THUNDER BAY HARBOUR IMPROVEMENTS LIMITED (RESPONDENT) AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #1) AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (INTERVENER #2).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (APRIL 13, 1966).

1. THE NAME "THUNDER BAY HARBOUR IMPROVEMENTS LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "THUNDER BAY HARBOUR IMPROVEMENTS LIMITED".

2. IN THIS CASE IT IS CLEAR THAT THE EMPLOYEES AFFECTED BY THE APPLICATION WERE COVERED BY A COLLECTIVE AGREEMENT BETWEEN LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 AND THE GENERAL CONTRACTORS DIVISION OF THE LAKEHEAD BUILDERS EXCHANGE, OF WHICH THE RESPONDENT IS A MEMBER. THAT AGREEMENT CEASED TO OPERATE ON MARCH 31ST 1966. THIS APPLICATION WAS FILED MARCH 28TH, 1966 AND IS, THEREFORE, TIMELY UNDER THE PROVISIONS OF SECTION 5 OF THE LABOUR RELATIONS ACT.

3. THE APPLICANT HAS FILED A DULY COMPLETED FORM 59, STATEMENT ON STATUS OF TRADE UNION, CONSTRUCTION INDUSTRY. THE APPLICANT ALSO FILED TWO CERTIFICATES OF MEMBERSHIP. THE CERTIFICATES ARE SIGNED BY THE MEMBERS AND INDICATE THAT MONTHLY DUES OF \$10.25 HAVE BEEN PAID FOR AT LEAST ONE MONTH WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE CERTIFICATES ARE CHECKED AND CERTIFIED CORRECT BY A BUSINESS REPRESENTATIVE OF THE APPLICANT. THE APPLICANT FILED A DULY COMPLETED FORM 60, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

4. THE RESPONDENT FAILED TO FILE A REPLY AND SPECIMEN SIGNATURES, BUT DID FILE A LIST OF EMPLOYEES CONTAINING TWO NAMES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

5. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

6. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

7. THE BOARD FINDS FURTHER THAT ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, PERSONS COVERED BY A CERTIFICATE, DATED MARCH 29TH, 1966, ISSUED BY THIS BOARD TO INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, PERSONS, OTHER THAN IRONWORKERS, COVERED BY THE COLLECTIVE AGREEMENT BETWEEN LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 AND THE GENERAL CONTRACTORS DIVISION OF THE LAKEHEAD BUILDERS EXCHANGE, DATED JUNE 10TH, 1964, AND PERSONS COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 AND THE LAKEHEAD BUILDERS EXCHANGE, DATED JUNE 10TH, 1964, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

THE ABOVE FINDING HAS BEEN MADE ON THE FOLLOWING ASSUMPTIONS:

- (1) THAT THE APPLICANT IS NOT SEEKING TO INCLUDE REINFORCING RODMEN IN THE BARGAINING UNIT;
- (2) THAT THE APPLICANT IS NOT SEEKING TO INCLUDE IN THE BARGAINING UNIT EMPLOYEES ENGAGED IN RIGGING AND WELDING IN CONNECTION WITH PILE DRIVING.

IF EITHER ASSUMPTION IS INCORRECT THEN THE MATTER MAY BE RAISED BY THE APPLICANT IMMEDIATELY FOLLOWING THE ISSUING OF THIS DECISION. THE BOARD HAS DECIDED TO PROCEED ON THIS BASIS BECAUSE IT IS REALIZED THAT THE PARTIES WILL NOT BE ABLE TO PROCEED, FOR THE TIME BEING, WITH THE REPRESENTATION VOTE DIRECTED BELOW IN VIEW OF THE FACT THAT THE RESPONDENT NO LONGER HAS PERSONS IN THE BARGAINING UNIT SET OUT ABOVE IN ITS EMPLOY.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT OR THE LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA.

10. THE MATTER IS REFERRED TO THE REGISTRAR, WHO IS DIRECTED TO REQUEST THE PARTIES TO REPORT FORTHWITH AND THEREAFTER FROM TIME TO TIME AS TO WHETHER THE RESPONDENT HAS EMPLOYEES IN THE BARGAINING UNIT IN ITS EMPLOY.

11630-66-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, LOCAL 749 (APPLICANT) v. ATLAS CONSTRUCTION & ENGINEERING (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (APRIL 20, 1966).

1. THE APPLICANT HAS FILED A DULY COMPLETED FORM 59, STATEMENT ON STATUS OF TRADE UNION, CONSTRUCTION INDUSTRY. THE APPLICANT ALSO FILED TWO MEMBERSHIP BOOKS. THE MEMBERSHIP BOOKS ARE SIGNED BY THE MEMBERS AND INDICATE THAT MONTHLY DUES HAVE BEEN PAID FOR AT LEAST ONE MONTH WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE APPLICANT FILED A DULY COMPLETED FORM 60, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

2. THE RESPONDENT FAILED TO FILE A REPLY, A LIST OF EMPLOYEES AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. THE RESPONDENT, HOWEVER, DID SUPPLY THE BOARD WITH THE NAMES OF THE TWO LABOURERS WHO WOULD FALL INTO THE BARGAINING UNIT PROPOSED BY THE APPLICANT AND WHO WERE AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

5. THE AREA PROPOSED BY THE APPLICANT IN THIS CASE, THAT IS, THE COUNTY OF KENT, DOES NOT CORRESPOND TO THE AREA NORMALLY GRANTED BY THE BOARD WHICH CONSISTS OF THE COUNTIES OF ESSEX AND KENT. THIS LATTER AREA IS ONE THAT WAS SET HAVING REGARD TO THE ESTABLISHED COLLECTIVE BARGAINING PATTERNS. THE BOARD SEES NO REASON TO DEPART FROM THAT AREA IN THIS CASE. (SEE THE KEILLOR PIPE LINES CASE, O.L.R.B. MONTHLY REPORT, JULY 1965, P. 251). THE BOARD, THEREFORE, FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE RESPONDENT HAS INFORMED THE BOARD THAT IT HAS NO PERMANENT EMPLOYEES AT THE PRESENT TIME. THIS IS NOT AN UNUSUAL CIRCUMSTANCE IN THE CONSTRUCTION INDUSTRY AND IS NOT, THEREFORE, A FACTOR THAT THE BOARD TAKES INTO CONSIDERATION IN CONSTRUCTION INDUSTRY CASES. FURTHERMORE, THE FACT THAT THERE WERE NO EMPLOYEES IN THE BARGAINING UNIT FOLLOWING THE FILING OF THE APPLICATION IS NOT A FACTOR WHICH THE BOARD TAKES INTO CONSIDERATION PROVIDED THAT THERE WERE EMPLOYEES IN THE UNIT ON THE DATE OF THE MAKING OF THE APPLICATION. SEE MELDON CONSTRUCTION LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1965, P. 163.

7. HAVING REGARD THEN TO THE ABOVE CONSIDERATIONS, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11642-66-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA (APPLICANT) v. PATRICK CONSTRUCTION CO. LTD. (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (APRIL 21, 1966).

1. THE NAME "PATRICK CONSTRUCTION LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "PATRICK CONSTRUCTION Co. LTD."
2. THE APPLICANT HAS FILED A DULY COMPLETED FORM 59, STATEMENT ON STATUS OF TRADE UNION, CONSTRUCTION INDUSTRY. THE APPLICANT ALSO FILED TWENTY-FIVE COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THE COMBINATION APPLICATIONS FOR MEMBERSHIP ARE SIGNED BY THE EMPLOYEES AND THE RECEIPTS ARE COUNTERSIGNED AND INDICATE THAT A PAYMENT OF AT LEAST \$1.00 HAS BEEN MADE WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE MONEY WAS COLLECTED BY MORE THAN ONE PERSON. THE APPLICANT FILED A DULY COMPLETED FORM 60, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.
3. THE RESPONDENT FILED A REPLY, A LIST OF EMPLOYEES CONTAINING TWENTY-FOUR NAMES ON SCHEDULE A AND FOUR NAMES ON SCHEDULE D AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. NINETEEN OF THE NAMES APPEARING ON THE TWENTY-FIVE COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS CORRESPOND TO NAMES APPEARING ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT.
4. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (j) OF THE LABOUR RELATIONS ACT.
5. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.
6. THE RESPONDENT STATES IN ITS REPLY THAT IT HAS BEEN NEGOTIATING WITH THE HAMILTON LOCAL OF THE APPLICANT AND REQUESTS A POSTPONEMENT OF THE APPLICATION AND HEARING PENDING FURTHER NEGOTIATIONS. THE HAMILTON LOCAL IS NOT A PARTY TO THESE PROCEEDINGS AND THERE IS NO EVIDENCE BEFORE THE BOARD THAT THEY HAVE ANY INTEREST IN THE APPLICATION. THE APPLICANT HAS INFORMED THE BOARD THAT IT IS NOT PREPARED TO DELAY THE MATTER. IN THESE CIRCUMSTANCES WE ARE NOT PREPARED TO DEFER CONSIDERATION OF THIS APPLICATION. APART FROM THIS QUESTION THERE IS NOTHING IN THE MATERIALS BEFORE US WHICH WOULD WARRANT THE BOARD PUTTING THIS CASE ON FOR HEARING. ALTHOUGH THE RESPONDENT HAS PROPOSED A PROJECT RATHER THAN AN AREA CERTIFICATION THE BOARD BY THE EXPRESS TERMS OF SECTION 92 OF THE LABOUR RELATIONS ACT "SHALL NOT CONFINE THE UNIT TO A PARTICULAR PROJECT". IN THE RESULT, THEREFORE, WE HAVE CONCLUDED THAT A HEARING IS NOT NECESSARY IN THIS CASE. SEE SECTION 75 (9A) OF THE LABOUR RELATIONS ACT.
7. THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND

PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11643-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93
(APPLICANT) v. PAUL PAUZE & FILS LTEE (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (APRIL 25, 1966).

1. THE NAME "PAUL PAUZE & SON LTD" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "PAUL PAUZE & FILS LTEE."

2. THE APPLICANT HAS FILED A DULY COMPLETED FORM 59, STATEMENT ON STATUS OF TRADE UNION, CONSTRUCTION INDUSTRY. THE APPLICANT ALSO FILED FIVE CERTIFICATES OF MEMBERSHIP. THE CERTIFICATES ARE SIGNED BY THE MEMBERS AND INDICATE THAT MONTHLY DUES OF \$5.00 HAVE BEEN PAID FOR AT LEAST ONE MONTH WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE CERTIFICATES ARE CHECKED AND CERTIFIED CORRECT BY AN OFFICER OF THE APPLICANT. THE APPLICANT FILED A DULY COMPLETED FORM 60, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

3. THE RESPONDENT FILED A REPLY, BUT FAILED TO FILE A LIST OF EMPLOYEES AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

4. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

5. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

6. THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE RESPONDENT SUBMITS THAT SOME OF THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND

LOCAL 792 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA. THE RESPONDENT IS BASED IN SOREL, QUEBEC, AND THE AGREEMENT IN QUESTION COVERS EMPLOYEES IN RESPONDENT'S SHOP IN THAT LOCATION. THE JOB SITE GIVING RISE TO THE PRESENT APPLICATION IS IN OTTAWA BUT SOME OF THE EMPLOYEES WORKING IN OTTAWA ON INSTALLATION HAVE COME FROM SOREL. WHILE IT MAY WELL BE THAT THE AGREEMENT WHICH THE RESPONDENT HAD WITH LOCAL 2792 COVERS ITS EMPLOYEES WHILE ENGAGED IN INSTALLATION ANYWHERE IN THE PROVINCE OF QUEBEC, WE ARE UNABLE TO FIND ANYTHING IN THE AGREEMENT WHICH WOULD SUGGEST THAT IT WAS INTENDED TO COVER EMPLOYEES WORKING OUTSIDE THAT PROVINCE. IN THIS CONNECTION WE NOTE THAT ARTICLE 11.04 PROVIDES THAT EMPLOYEES WORKING ON INSTALLATION "SHALL BE SUBJECT TO THE CONSTRUCTION DECREE" WHICH, OF COURSE, HAS NO APPLICATION IN ONTARIO.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

INDEXED ENDORSEMENT - TERMINATION

11572-65-R: JAMES L. DEE (APPLICANT) V. THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO-CLC, DAIRYWORKERS LOCAL 440 (RESPONDENT).

(RE: WILMOT'S DAIRY LIMITED).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

DECISION OF THE BOARD: (APRIL 4, 1966).

1. THE APPLICANT APPLIED ON MARCH 24TH, 1966, PURSUANT TO THE PROVISIONS OF SECTION 45 (1) OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WITH RESPECT TO THAT UNIT OF EMPLOYEES OF WILMOT'S DAIRY LIMITED REPRESENTED BY THE RESPONDENT.

2. THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF WILMOT'S DAIRY LIMITED ON OCTOBER 7TH, 1964, AND HAS NOT AS YET SUCCEEDED IN ENTERING INTO A COLLECTIVE AGREEMENT WITH WILMOT'S DAIRY LIMITED.

3. IT WOULD APPEAR THAT A CONCILIATION OFFICER WAS APPOINTED BY THE MINISTER TO ASSIST THE RESPONDENT AND WILMOT'S DAIRY LIMITED ON FEBRUARY 1ST, 1965, AND FOLLOWING THE CONCILIATION OFFICER'S REPORT ON OCTOBER 21ST, 1965, WHEREIN THE CONCILIATION OFFICER RECOMMENDED THAT A CONCILIATION BOARD BE ESTABLISHED, THE MINISTER APPOINTED A CONCILIATION BOARD ON NOVEMBER 3RD, 1965 AND THE CONCILIATION BOARD'S REPORT HAS NOT AS YET BEEN RELEASED BY THE MINISTER.

4. SECTION 54 (1) OF THE ACT PROVIDES THAT AN APPLICATION FOR TERMINATION CAN ONLY BE MADE WHERE THE APPLICANT UNION FAILS TO GIVE THE EMPLOYER NOTICE UNDER SECTION 11 WITHIN 60 DAYS FOLLOWING CERTIFICATION. SINCE A CONCILIATION OFFICER AND CONCILIATION BOARD HAVE BEEN APPOINTED BY THE MINISTER, IT WOULD APPEAR THAT THE TRADE UNION HAS IN FACT GIVEN NOTICE TO BARGAIN TO THE EMPLOYER.

5. EVEN IF THE BOARD WERE TO CONSIDER THIS APPLICATION AS HAVING BEEN MADE UNDER SOME OTHER SECTION OF THE LABOUR RELATIONS ACT IT WOULD APPEAR THAT PURSUANT TO THE PROVISIONS OF SECTION 46 (1) THAT THIS APPLICATION IS UNTIMELY SINCE 30 DAYS HAVE NOT ELAPSED AFTER THE REPORT OF THE CONCILIATION BOARD HAS BEEN RELEASED BY THE MINISTER TO THE PARTIES.

6. IT THEREFORE APPEARS TO THE BOARD FROM THE FACTS SET OUT ABOVE THAT NONE OF THE TIME PERIODS REFERRED TO IN THE PRECEDING PARAGRAPHS COULD HAVE ELAPSED BECAUSE THE REPORT OF THE CONCILIATION BOARD HAS NOT AS YET BEEN RELEASED BY THE MINISTER TO THE PARTIES.

7. IF THE BOARD IS CORRECT IN ITS ASSUMPTION THAT THE ABOVE ARE THE FACTS OF THIS CASE IT WOULD FOLLOW PURSUANT TO THE PROVISIONS OF SECTION 45 (1) AND SECTION 46 (1) OF THE ACT THAT THIS APPLICATION IS UNTIMELY.

8. THE BOARD ACCORDINGLY DIRECTS THE APPLICANT TO ADVISE THE BOARD IN WRITING ON OR BEFORE THE 12TH DAY OF APRIL, 1966, WHETHER, IN HIS OPINION, THE BOARD IS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT ABOVE. IF THE APPLICANT IS OF OPINION THAT THE BOARD IS IN ERROR HE WILL INCLUDE IN HIS ADVICE TO THE BOARD A SUMMARY OF THE FACTS IN SUPPORT OF HIS OPINION.

9. THIS APPLICATION WILL NOT BE PROCESSED FURTHER PENDING THE RECEIPT OF SUCH ADVICE AND SUMMARY OF FACTS FROM THE APPLICANT.

10. IF THE BOARD DOES NOT RECEIVE SUCH ADVICE SUPPORTED BY A SUMMARY OF FACTS AS HEREIN DIRECTED, THIS APPLICATION WILL BE DISPOSED OF PURSUANT TO THE PROVISION OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE WITHOUT FURTHER NOTICE TO THE APPLICANT.

INDEXED ENDORSEMENT - SECTION 79 (2)

10823-65-M: CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 157 (APPLICANT) v. CITY OF ST CATHARINES (RESPONDENT).

BEFORE: J. FINKELMAN, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN

DECISION OF THE BOARD: (APRIL 6, 1966).

APPLICATION UNDER SECTION 79 (2) OF THE LABOUR RELATIONS ACT.

1. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD BY EITHER PARTY WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 41 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING SERVICE OF THE REPORT OF THE EXAMINER DATED FEBRUARY 24, 1966 IN THIS MATTER.

2. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT DAVID FORESTER EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE ACT.
3. THE BOARD FINDS THAT CLIVE FOSTER EXERCISED MANAGERIAL FUNCTIONS AT THE TIME OF THE REFERENCE TO THE EXAMINER AND THAT HE WAS NOT AT THAT TIME AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.
4. THE BOARD'S AUTHORIZATION TO THE EXAMINER TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF THE PERSONS CONCERNED IN THIS APPLICATION DID NOT RELATE TO J. ATKINSON. HOWEVER, THE REPRESENTATIVES OF THE PARTIES SUBSEQUENTLY REQUESTED THAT THE EXAMINER SHOULD INQUIRE INTO HIS DUTIES AND RESPONSIBILITIES BECAUSE HE HAD TAKEN OVER THE POSITION OF TECHNICAL SUPERVISOR, A POSITION THAT HAD FORMERLY BEEN OCCUPIED BY CLIVE FOSTER. IT IS NOT CLEAR FROM THE WORDING OF THE REQUESTS SUBMITTED BY THE REPRESENTATIVES OF THE PARTIES WHETHER THEY WERE DESIROUS OF HAVING THE EXAMINER INQUIRE INTO ATKINSON'S DUTIES AND RESPONSIBILITIES WITH A VIEW TO HAVING THE BOARD MAKE A DETERMINATION AS TO HIS STATUS OR WHETHER IT WAS THEIR DESIRE TO HAVE ATKINSON EXAMINED TO OBTAIN FURTHER EVIDENCE REGARDING THE STATUS OF FOSTER. HOWEVER THAT MAY BE, THE FACT IS THAT ATKINSON WAS TRANSFERRED TO THE NEW POSITION A SHORT TIME AGO AND HIS DUTIES AND RESPONSIBILITIES DO NOT INCLUDE ALL THE DUTIES AND RESPONSIBILITIES THAT WERE VESTED IN CLIVE FOSTER. THE BOARD IS NOT IN A POSITION AT THIS STAGE TO MAKE ANY DETERMINATION AS TO THE STATUS OF ATKINSON. OUR CONCLUSION IN THIS REGARD IS, OF COURSE, WITHOUT PREJUDICE TO THE RIGHT OF EITHER PARTY TO MAKE A FURTHER APPLICATION WITH RESPECT TO ATKINSON AT A LATER DATE.
5. THE BOARD FURTHER FINDS THAT JAMES MACARA EXERCISES MANAGERIAL FUNCTIONS AND THAT HE IS NOT AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT.

INDEXED ENDORSMENT - SECTION 63

11485-65-M: GERALD O'NEILL (COMPLAINANT) v. LOCAL 93, U.B. OF C. & J. OTTAWA
(RESPONDENT).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDERMOTT.

APPEARANCES AT THE HEARING: GERALD O'NEILL FOR THE COMPLAINANT, AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: (APRIL 14, 1966).

1. THIS IS A COMPLAINT BY THE COMPLAINANT THAT THE RESPONDENT HAS FAILED UPON HIS REQUEST, TO FURNISH HIM WITH A COPY OF THE AUDITED FINANCIAL STATEMENT OF ITS AFFAIRS TO THE END OF ITS LAST FISCAL YEAR, CONTRARY TO SECTION 63 OF THE LABOUR RELATIONS ACT.
2. THE BOARD FINDS THAT THE COMPLAINANT IS A MEMBER OF THE RESPONDENT UNION, THAT HE REQUESTED A FINANCIAL STATEMENT AND THAT THE RESPONDENT HAS FAILED TO FURNISH ONE TO HIM CONTRARY TO SECTION 63 OF THE LABOUR RELATIONS ACT.

3. THE BOARD THEREFORE DIRECTS THAT THE RESPONDENT FILE WITH THE REGISTRAR A COPY OF THE AUDITED FINANCIAL STATEMENT OF ITS AFFAIRS TO THE END OF ITS LAST FISCAL YEAR, VERIFIED BY THE AFFIDAVIT OF ITS TREASURER OR OTHER OFFICER RESPONSIBLE FOR THE HANDLING AND ADMINISTRATION OF ITS FUNDS, AND TO FURNISH A COPY OF SUCH STATEMENT TO THE COMPLAINANT, WITHIN TEN DAYS FROM THE DATE HEREOF.

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

10905-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. NATIONAL STEEL CAR CORPORATION LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., D.M. STOREY AND F.S. COOKE FOR THE APPLICANT, E. L. STRINGER, T. F. RAHILLY AND R. ALLASTAR FOR THE RESPONDENT.

DECISION OF THE BOARD: (APRIL 5, 1966).

1. THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT ON OCTOBER 1ST, 1965, AND REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

2. BECAUSE OF TWO NON-PAY ALLEGATIONS MADE BY THE RESPONDENT AND DISCREPANCIES IN SIGNATURES ON SOME OF THE MEMBERSHIP DOCUMENTS FILED BY THE APPLICANT, THE BOARD DIRECTED THE REGISTRAR TO CAUSE THE BALLOT BOX TO BE SEALED AND TO LIST THIS MATTER FOR HEARING FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE.

3. THIS MATTER CAME ON FOR HEARING IN THE FIRST INSTANCE ON DECEMBER 16TH, 1965, AT WHICH TIME FULL OPPORTUNITY WAS GIVEN TO THE PARTIES TO CALL EVIDENCE AND ALL THE EVIDENCE ADDUCED BY THE PARTIES WAS TENDERED AT THAT HEARING. THE HEARING COMMENCED ON DECEMBER 16TH, 1965 AND WAS TO CONTINUE ON DECEMBER 17TH, 1965, HOWEVER, BECAUSE COUNSEL FOR THE APPLICANT WAS OTHERWISE COMMITTED, IT WAS AGREED THAT THE HEARING BE ADJOURNED TO A LATER DATE. THE HEARING CONTINUED ON JANUARY 12TH, 1966, AT WHICH TIME THE BOARD HEARD ARGUMENT BY THE PARTIES ON THE EVIDENCE HEARD BY THE BOARD ON DECEMBER 16TH, 1965. NO REQUEST WAS MADE BETWEEN DECEMBER 16TH, 1965 AND JANUARY 12TH, 1966, TO CALL FURTHER EVIDENCE AND NEITHER PARTY SOUGHT TO ADDUCE ADDITIONAL EVIDENCE AT THE HEARING OF JANUARY 12TH, 1966.

4. THE BOARD, IN ITS DECISION OF JANUARY 26TH, 1966, DISMISSED THE APPLICATION HAVING FOUND THAT

"SINCE THE DOCUMENTS TENDERED AS EVIDENCE OF MEMBERSHIP ARE NOT SUPPORTED BY A RELIABLE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS BECAUSE OF THE FAILURE OF THE APPLICANT'S OFFICIALS TO MAKE THE NECESSARY INQUIRIES, AND SINCE THE ABSENCE OF A RELIABLE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS GOES TO THE VERY ROOT OF THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT, THE BOARD IS CONSTRAINED TO FIND THAT THE MEMBERSHIP DOCUMENTS CAN NOT BE ACCEPTED AS CONTAINING

RELIABLE INFORMATION WHICH COULD MEET EVEN THE MINIMUM STANDARDS OF PROOF REQUIRED BY THE BOARD. (SEE ESSEX WIRE CORPORATION LIMITED CASE, O.L.R.B. MONTHLY REPORT, OCTOBER, 1965, P. 490). THIS APPLICATION MUST ACCORDINGLY FAIL."

THE BOARD ALSO IMPOSED A SIX MONTH BAR ON FUTURE APPLICATIONS BY THE APPLICANT WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT.

5. FOLLOWING THE BOARD'S DECISION OF JANUARY 26TH, 1966, THE APPLICANT, ON FEBRUARY 8TH, 1966, REQUESTED THE BOARD TO RECONSIDER ITS DECISION AND PERMIT THE PARTIES "TO ADDUCE ADDITIONAL EVIDENCE BEARING ON THE MATTERS BEFORE THE BOARD" AND TO SPECIFICALLY PERMIT THE APPLICANT TO CALL MR. COOKE, WHO, IT IS ALLEGED MADE INQUIRIES INDEPENDENTLY OF MR. GRIFFIN, WHO WAS DIRECTLY IN CHARGE OF THE APPLICANT'S CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES. THE APPLICANT ALSO REQUESTED THE BOARD TO REVOKE THE IMPOSITION OF THE SIX MONTH BAR IN THIS CASE.

6. THE BOARD DIRECTED THE REGISTRAR TO LIST THIS MATTER FOR HEARING TO PROVIDE THE APPLICANT WITH AN OPPORTUNITY TO SHOW CAUSE WHY THE BOARD SHOULD GRANT THE RELIEF REQUESTED BY THE APPLICANT IN ITS LETTER OF FEBRUARY 8TH, 1966, IN THIS MATTER.

7. DEALING FIRST WITH THE APPLICANT'S REQUEST THAT IT BE PERMITTED TO ADDUCE "ADDITIONAL EVIDENCE" IT IS TO BE NOTED THAT IT WAS NOT ALLEGED THAT THE "ADDITIONAL EVIDENCE" WAS NEW EVIDENCE WHICH WAS NOT AVAILABLE TO THE APPLICANT AT THE FIRST HEARING IN THIS MATTER. AS A MATTER OF FACT, MR. COOKE'S EVIDENCE WAS ALWAYS AVAILABLE TO THE APPLICANT IN THAT MR. COOKE WAS THE AREA REPRESENTATIVE OF THE APPLICANT. THE RELEVANCY OF ANY EVIDENCE MR. COOKE MIGHT HAVE SHOULD HAVE BEEN READILY APPARENT FROM THE TESTIMONY OF THE APPLICANT'S WITNESSES ON DECEMBER 16TH, 1965. IN THE LETTER REQUESTING THE BOARD TO REVIEW ITS DECISION, COUNSEL FOR THE APPLICANT STATED IN PART AS FOLLOWS:

"IN THE COURSE OF THE HEARINGS, COUNSEL FOR THE APPLICANT TOOK THE RESPONSIBILITY FOR THE DECISION NOT TO CALL MR. COOKE AS WITNESS. IN VIEW OF MR. GRIFFIN'S TESTIMONY IT HARDLY SEEMED THAT MR. COOKE'S EVIDENCE COULD BE OF VALUE."

8. APART FROM THE FACT THAT THIS EVIDENCE WAS AT ALL TIMES AVAILABLE TO THE APPLICANT, IF SUCH EVIDENCE WERE ADDUCED IT COULD ONLY TEND TO CONTRADICT THE EVIDENCE OF NOT ONLY MR. GRIFFIN BUT IN ADDITION THE EVIDENCE OF OTHER WITNESSES CALLED BY THE APPLICANT. MR. GROVE, ONE OF THE APPLICANT'S VOLUNTEER ORGANIZERS IN THIS CAMPAIGN TESTIFIED THAT NO INQUIRIES WERE MADE OF HIM CONCERNING THE CARDS SIGNED BY HIM OR SUBMITTED TO HIM. IN ADDITION, MR. STETSON, A PAID OFFICIAL OF THE APPLICANT, TESTIFIED THAT HE MADE NO INQUIRIES OF PERSONS WHO TURNED IN MEMBERSHIP CARDS TO HIM AND NO ONE MADE INQUIRIES OF MR. STETSON WHEN HE TURNED IN THE MEMBERSHIP CARDS HE HAD CAUSED TO BE SIGNED. THERE WAS NO SUGGESTION THAT INQUIRIES WERE MADE OF HIM AT ANY OTHER TIME. AS ALREADY INDICATED IN THE BOARD'S DECISION OF JANUARY 26TH, 1966, MR. GRIFFIN TESTIFIED THAT NO INQUIRIES WERE MADE OF HIM ALTHOUGH HE ALSO ACTED AS COLLECTOR.

9. THE ISSUE CONCERNING WHAT INQUIRIES, IF ANY, WERE MADE OF THE COLLECTORS WAS CLEARLY BEFORE THE BOARD AS A RESULT OF THE EVIDENCE ADDUCED ON DECEMBER 16TH, 1965. NO ATTEMPT WAS MADE BY THE APPLICANT TO CALL MR. COOKE TO GIVE ADDITIONAL EVIDENCE AT THAT HEARING ALTHOUGH ARRANGEMENTS WERE MADE DURING THE HEARING TO HAVE MR. STOREY, THE APPLICANT'S OFFICIAL WHO COMPLETED THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 9) APPEAR AND GIVE EVIDENCE. HE TRAVELLED FROM TORONTO TO HAMILTON TO TESTIFY CONCERNING WHAT INQUIRIES HE HAD MADE PRIOR TO THE COMPLETION OF FORM 9. NO ATTEMPT WAS MADE BY THE APPLICANT TO CALL MR. COOKE AT THE HEARING ON JANUARY 12TH, 1966.

10. IT IS TO BE NOTED THAT THE APPLICANT WAS CALLED UPON FIRST, ON JANUARY 12TH, 1966, TO PRESENT ARGUMENT AND COUNSEL FOR THE APPLICANT DEALT SPECIFICALLY WITH THE QUESTION OF INQUIRIES IN HIS ARGUMENT. IN REBUTTAL TO THE RESPONDENT'S ARGUMENT, COUNSEL FOR THE APPLICANT AGAIN DEALT WITH THIS ISSUE. THE FACT THAT THE APPLICANT DEALT WITH THIS ISSUE, IN THE MANNER IN WHICH IT DID, IN ITS ARGUMENT, PRECLUDES THE APPLICANT FROM TAKING THE POSITION THAT IT HAD INADEQUATE NOTICE OF THE FACT THAT THIS ISSUE WAS BEFORE THE BOARD.

11. IN VIEW OF ALL THESE FACTS, THE BOARD FINDS THAT THE APPLICANT HAD FULL OPPORTUNITY AT THE HEARING OF DECEMBER 16TH, 1965, TO CALL EVIDENCE CONCERNING ALL THE ISSUES BEFORE THE BOARD INCLUDING THE ISSUE OF THE NATURE OF THE INQUIRIES MADE IN SUPPORT OF THE SUFFICIENCY OF FORM 9. THE NATURE OF SUCH INQUIRIES WAS AN ISSUE COLLATERAL TO THE MAIN ISSUE DEALING WITH THE "NON-SIGN" AND "NON-PAY" ALLEGATIONS. AN ADDITIONAL OPPORTUNITY WAS AVAILABLE AT THE HEARING ON JANUARY 12TH, 1966, FOR THE APPLICANT TO CALL FURTHER EVIDENCE PRIOR TO ARGUMENT, HAVING HAD APPROXIMATELY FOUR WEEKS TO CONSIDER ITS POSITION.

12. THE RIGHT TO CALL ADDITIONAL EVIDENCE WAS DEALT WITH BY THE BOARD IN THE INTERNATIONAL NICKEL COMPANY OF CANADA, LIMITED CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER 1962, 299 AT P. 313, WHEREIN THE BOARD STATED IN PART AS FOLLOWS:

[AS OSLER J. A. SAID IN RATHBONE V. MICHAEL, (1920) 20 O. L. R. 503, AT P. 507: "THERE IS NO DOUBT THAT THE RULE WHICH GOVERNS THE ADMISSION OF NEW OR FURTHER EVIDENCE IS RIGHTLY FENCED ROUND WITH STRICT LIMITATIONS." IN VARETTE V. SAINSBURY, [1928] S. C. R. 72 (AT P. 76), [1928] 1 D. L. R. 273 (AT P. 276), RINFRET J. (AS HE THEN WAS), DELIVERING THE JUDGMENT OF THE SUPREME COURT OF CANADA, SAID: "ON AN APPLICATION FOR A NEW TRIAL ON THE GROUND THAT NEW EVIDENCE HAS BEEN DISCOVERED SINCE THE TRIAL, WE TAKE THE RULE TO BE WELL ESTABLISHED THAT A NEW TRIAL SHOULD BE ORDERED ONLY WHERE THE NEW EVIDENCE PROPOSED TO BE ADDUCED COULD NOT HAVE BEEN OBTAINED BY REASONABLE DILIGENCE BEFORE THE TRIAL AND THE NEW EVIDENCE IS SUCH THAT, IF ADDUCED, IT WOULD BE PRACTICALLY CONCLUSIVE". IN RATHBONE V. MICHAEL, SUPRA, OSLER J. A., IN DEALING WITH THE NATURE OF THE EVIDENCE WHICH OUGHT TO BE ADDUCED IN SUCH A SITUATION, SAID:

... THE PRACTICE HAS BEEN ... STATED IN YOUNG V. KERSHAW, 81 L.T.R. 531 (C.A.) ... AS IS SAID IN [THAT] CASE, ... "AS TO THE CLASS OF EVIDENCE, IT MUST BE SUCH THAT IF ADDUCED IT

WOULD BE PRACTICALLY CONCLUSIVE - THAT IS, EVIDENCE OF SUCH A CLASS AS TO RENDER IT PROBABLE ALMOST BEYOND DOUBT THAT THE VERDICT WOULD BE DIFFERENT". MERELY CORROBORATIVE EVIDENCE, EVIDENCE TO ADMIT WHICH WOULD BE MERELY SETTING OATH AGAINST OATH, EVIDENCE OBTAINED UNDER SUSPICIOUS CIRCUMSTANCES, OR EVIDENCE WHICH MIGHT ENABLE AN OPPONENT'S WITNESS TO BE CROSS-EXAMINED MORE EFFECTIVELY, WILL NOT DO. IT MUST, AS A RULE, BE "OF SOME FACT OR DOCUMENT ESSENTIAL TO THE CASE, OF THE EXISTENCE OR AUTHENTICITY OF WHICH THERE IS NO REASONABLE DOUBT, OR NO ROOM FOR SERIOUS DISPUTE" ...]

THE BOARD IS OF OPINION THAT ANY EVIDENCE WHICH COULD BE ADDUCED BY MR. COOKE, IN THE LIGHT OF THE TESTIMONY OF THE OTHER WITNESSES CALLED BY THE APPLICANT, WOULD NOT BE OF THE CLASS OF EVIDENCE DESCRIBED BY OSLER J. A.

13. THE BOARD IS THEREFORE OF OPINION THAT IT SHOULD NOT PERMIT THE PARTIES TO CALL ADDITIONAL EVIDENCE AS REQUESTED BY THE APPLICANT.

14. WHILE THE APPLICANT REQUESTED THE BOARD TO RELIEVE AGAINST THE IMPOSITION OF THE SIX MONTH BAR IT DID NOT PRESENT ANY STRONG ARGUMENT IN SUPPORT OF THIS REQUEST.

15. IN DECIDING WHETHER THE BAR SHOULD BE SUSTAINED THE BOARD HAS CONSIDERED THE FOLLOWING FACTORS. THIS APPLICATION WAS DISMISSED FOLLOWING THE TAKING OF A PRE-HEARING REPRESENTATION VOTE. ALTHOUGH THE BALLOTS WERE NOT COUNTED, THE REASON FOR NOT COUNTING THE BALLOTS WAS BECAUSE THE APPLICANT WAS DISMISSED BECAUSE OF A MATERIAL DEFECT IN THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT. THE RESPONDENT HAVING BEEN PUT TO THE EXPENSE AND INCONVENIENCE OF THE TAKING OF A VOTE IN THIS MATTER, THE BOARD IS OF OPINION THAT THE IMPOSITION OF A SIX MONTH BAR IS THE APPROPRIATE REMEDY IN THESE CIRCUMSTANCES.

16. THE BOARD IS THEREFORE OF OPINION THAT IT SHOULD NOT RECONSIDER, VARY OR REVOKE ITS DECISION OF JANUARY 26TH, 1966, IN THIS MATTER AND THE APPLICANT'S REQUEST IS THEREFORE DENIED.

11415-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 506 (APPLICANT) v. 20TH CENTURY MASONRY COMPANY (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (APRIL 5, 1966).

1. THE RESPONDENT HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF MARCH 2, 1966 IN WHICH THE APPLICANT WAS CERTIFIED AS THE BARGAINING AGENT FOR CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN BOARD AREA #8. THE RESPONDENT SEEKS A NEW HEARING ALLEGING THAT IT WAS DENIED NATURAL JUSTICE AND FURTHER (IT WOULD SEEM) THAT IT HAS A NEW ISSUE TO RAISE BEFORE THE BOARD. THE

SUBMISSIONS OF THE PARTIES RELATING TO THIS REQUEST ARE CONTAINED IN LETTERS FROM THE RESPONDENT DATED MARCH 10 AND MARCH 22, 1966 AND IN A LETTER FROM THE APPLICANT DATED MARCH 21, 1966.

2. THIS BOARD HAS ALWAYS BEEN ACUTELY AWARE OF THE PRINCIPLES OF NATURAL JUSTICE AND ITS POLICIES AND RULES OF PROCEDURE REFLECT THIS AWARENESS. REFERENCE IS MADE TO AN ARTICLE BY THE CHAIRMAN OF THE BOARD ENTITLED "THE ONTARIO LABOUR RELATIONS BOARD AND NATURAL JUSTICE", 1965, PUBLISHED BY THE INDUSTRIAL RELATIONS CENTRE, QUEEN'S UNIVERSITY. WHEN, THEREFORE, A PARTY ALLEGES A DENIAL OF NATURAL JUSTICE, THE BOARD REGARDS THE MATTER AS ONE OF THE UTMOST IMPORTANCE. AS A CONSEQUENCE THE MEMBERS OF THE PANEL INVOLVED IN THIS CASE HAVE CAREFULLY REVIEWED THEIR NOTES OF THE PROCEEDINGS, SEARCHED THEIR MEMORIES AND GIVEN FULL CONSIDERATION TO THE REPRESENTATIONS OF THE PARTIES. THE FOLLOWING STATEMENT REPRESENTS THE UNANIMOUS VIEWS OF THE MEMBERS OF THE PANEL.

3. WHEN THE CASE WAS CALLED, THE CHAIRMAN, AS IS CUSTOMARY, READ OUT THE NAMES OF THE PERSONS APPEARING ON BEHALF OF THE VARIOUS PARTIES FROM THE APPEARANCE SHEETS COMPLETED BY THE PARTIES PRIOR TO THE COMMENCEMENT OF THE HEARING. MR. EDEN'S NAME DID NOT APPEAR ON ANY OF THE SHEETS AND ACCORDINGLY HIS NAME WAS NOT READ OUT. IF, THEREFORE, AS IS ALLEGED, MR. EDEN GAVE HIS NAME TO THE CLERK AS A REPRESENTATIVE OF THE MASONRY CONTRACTORS ASSOCIATION AND IF AS FURTHER ALLEGED, HE UNDERSTOOD THE CLERK HAD FILLED IN A SLIP FOR HIM (AND IT IS NOTED IT IS NOT ALLEGED HE ASKED THE CLERK TO DO SO) IT MUST HAVE BEEN APPARENT TO HIM THAT NO APPEARANCE SHEET HAD IN FACT BEEN COMPLETED ON HIS BEHALF. DESPITE THIS, HE DID NOT DRAW THIS MATTER TO THE ATTENTION OF THE BOARD. IT SHOULD PERHAPS BE RECORDED THAT THE MASONRY CONTRACTORS ASSOCIATION WAS NOT A PARTY TO THESE PROCEEDINGS AND HAD FILED NO INTERVENTION OF ANY KIND.

4. AFTER THE CASE WAS CALLED, THE VARIOUS PARTIES TO THE PROCEEDINGS TOOK THE PLACES AT THE COUNSEL TABLES. THE APPLICANT'S REPRESENTATIVES WERE SEATED AT ONE OF THE TABLES AND REPRESENTATIVES OF OBJECTING EMPLOYEES WERE ALSO SEATED AT THAT PARTICULAR TABLE. THE RESPONDENT'S REPRESENTATIVES, MESSRS. GREGORIS AND GUARIN, WERE SEATED AT THE OTHER TABLE. ALSO SEATED AT THIS TABLE WAS MR. MEIORIN. SEAT NEXT TO HIM WAS MR. EDEN. MR. MEIORIN WAS ASKED BY THE BOARD WHAT INTEREST HE HAD IN THE CASE BECAUSE HE APPEARED AS A REPRESENTATIVE OF BRICKLAYERS AND MASONS INTERNATIONAL UNION OF CANADA, LOCAL 1, WHICH WAS NOT A PARTY TO THE PROCEEDINGS. REPRESENTATIONS WERE THEN HEARD FROM ALL PARTIES ON THE QUESTION AS TO WHETHER THAT SAID LOCAL 1 SHOULD BE PERMITTED TO INTERVENE. MR. EDEN DID NOT SEEK TO SPEAK ON BEHALF OF ANYONE, INCLUDING THE RESPONDENT, NOR DID ITS REPRESENTATIVES REQUEST THAT HE SPEAK ON THEIR BEHALF. ON THE CONTRARY, OUR DISTINCT RECOLLECTION IS THAT DURING THE REPRESENTATIONS ON THIS ISSUE MR. EDEN CONFERRED WITH MR. MEIORIN.

5. FOLLOWING THE SUBMISSIONS, THE BOARD WITHDREW TO CONSIDER ITS DECISION WHICH WAS GIVEN ORALLY A SHORT TIME LATER. THE DECISION WAS THAT LOCAL 1 HAD NO STATUS IN THESE PROCEEDINGS. EITHER AT THIS POINT OR IMMEDIATELY BEFORE THE DECISION WAS GIVEN, THE APPLICANT'S REPRESENTATIVE ASKED THE BOARD WHOM MR. EDEN WAS REPRESENTING. MR. EDEN IMMEDIATELY VOLUNTEERED THAT HE WAS APPEARING AS "AMICUS CURIAE", USING THOSE VERY WORDS. THE BOARD DID NOT IN ANY WAY SUGGEST TO MR. EDEN THAT HE OUGHT TO WITHDRAW. THE MATTER WAS NOT DISCUSSED FURTHER BY ANYONE. FOLLOWING THE BOARD'S DECISION ON THE STATUS OF LOCAL 1, MR. MEIORIN WITHDREW FROM THE COUNSEL TABLE AND

HE WAS ACCOMPANIED BY MR. EDEN. BOTH PERSONS TOOK SEATS IN THE SPECTATOR SECTION OF THE BOARD ROOM. THE CASE THEN PROCEEDED. AT NO TIME DID THE RESPONDENT'S REPRESENTATIVES REQUEST THAT MR. EDEN SPEAK ON THEIR BEHALF AND AT NO TIME DID MR. EDEN IN ANY WAY REQUEST OR SUGGEST THAT HE WAS APPEARING ON BEHALF OF THE RESPONDENT. IT SHOULD BE STATED AT THIS POINT THAT MR. EDEN IS NO STRANGER TO BOARD PROCEEDINGS, HAVING APPEARED IN QUITE A NUMBER OF CASES BEFORE THE BOARD. FURTHERMORE, THE BOARD IS QUITE FAMILIAR WITH MR. EDEN'S UNFORTUNATE HANDICAP AND HE DID NOT LEAVE THE COUNSEL TABLE ALONE. WE DISTINCTLY REMEMBER THAT HE WITHDREW WITH MR. MEIORIN.

6. HAVING REGARD THEN TO THE ABOVE CIRCUMSTANCES, WE ARE UNABLE TO ACCEPT THE RESPONDENT'S SUBMISSION THAT IT WAS DENIED NATURAL JUSTICE IN THE PRESENTATION OF ITS CASE. WHILE IT MAY BE THAT THE RESPONDENT WOULD HAVE BEEN BETTER REPRESENTED HAD MR. EDEN APPEARED ON ITS BEHALF, RESPONSIBILITY FOR HIS NOT DOING SO MUST REST ON THE SHOULDERS OF MR. EDEN AND THE RESPONDENT'S REPRESENTATIVES. BOARD MEMBERS ARE NOT MIND READERS AND THERE WAS NOTHING IN THE COURSE OF THE PROCEEDINGS WHICH IN ANY WAY COULD BE TAKEN AS SUGGESTING THAT THE RESPONDENT DESIRED TO BE REPRESENTED BY MR. EDEN.

7. THE SECOND GROUND RAISED BY THE RESPONDENT IN ITS REQUEST FOR A FRESH HEARING IS THAT THERE IS A NEW ISSUE BEFORE THE BOARD. THIS ISSUE, ALTHOUGH NOT SPELLED OUT IN DETAIL, RELATES TO THE FACT THAT THE RESPONDENT IS ENGAGED IN RESIDENTIAL CONSTRUCTION WHEREAS, IT IS ALLEGED, THE APPLICANT TRADE UNION IS CONCERNED WITH OTHER TYPES OF CONSTRUCTION. THE RESPONDENT ADMITS THAT THE RESPONDENT'S REPLY FILED IN THE CASE DID NOT RAISE THIS ISSUE NOR WAS IT RAISED AT THE HEARING. IT IS NOT ENTIRELY CLEAR WHETHER THE RESPONDENT IS ALLEGING THAT IF MR. EDEN HAD REPRESENTED IT THE ISSUE WOULD HAVE BEEN RAISED AT THE HEARING, OR WHETHER THE RESPONDENT IS SAYING THIS IS AN ADDITIONAL GROUND FOR REQUESTING A NEW HEARING. IF IT IS THE FORMER, THEN WE HAVE ALREADY IN EFFECT DEALT WITH THE MATTER WHEN DEALING WITH THE SUBMISSION THAT THE RESPONDENT WAS DENIED ADEQUATE REPRESENTATION. IF IT IS THE LATTER, THEN THE ANSWER QUITE SIMPLY IS THAT IT WAS OPEN TO THE RESPONDENT TO RAISE IT EITHER IN ITS REPLY, WHICH IT DID NOT, OR AT THE HEARING. ONCE AGAIN, WE REITERATE, THERE WAS NEVER ANY ATTEMPT BY THE RESPONDENT'S REPRESENTATIVES OR MR. EDEN TO HAVE MR. EDEN SPEAK ON BEHALF OF THE RESPONDENT.

8. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE RESPONDENT'S REQUEST TO THE BOARD TO RECONSIDER ITS DECISION OF MARCH 1, 1966 AND TO GRANT A NEW HEARING IS DENIED.

11448-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) v. VILLAGE CONTRACTORS (RESPONDENT) AND BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1 (INTERVENER) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE, D. W. FORGIE AND MARINO TOPPAN APPEARING FOR THE APPLICANT, WALLACE FRAM APPEARING FOR THE RESPONDENT AND LLOYD CADSBY APPEARING FOR THE INTERVENER AND OBJECTORS.

DECISION OF THE BOARD: (APRIL 4, 1966).

1. AT THE HEARING HELD IN THIS MATTER ON MARCH 15TH, 1966, COUNSEL FOR THE

APPLICANT MOVED FOR LEAVE TO FILE ALLEGATIONS RESPECTING THE STATUS OF THE INTERVENER, THIS MOTION WAS MADE DURING THE COURSE OF THE BOARD'S INQUIRIES INTO THE INTERVENER'S STATUS. ON MARCH 17TH, 1966, THE BOARD DENIED THE APPLICANT'S MOTION.

2. BY LETTER, DATED MARCH 18TH, 1966, THE APPLICANT REQUESTED THE BOARD TO RECONSIDER ITS DECISION. IN ITS REQUEST FOR RECONSIDERATION THE APPLICANT SOUGHT TO ENLARGE ITS PREVIOUS REQUEST BY SEEKING LEAVE TO FILE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT IN CONNECTION WITH DOCUMENTARY EVIDENCE OF EMPLOYEES SUBMITTED IN OPPOSITION TO THE APPLICATION. IT IS STRESSED THAT THIS WAS NOT RAISED BY THE APPLICANT IN MAKING ITS ORIGINAL MOTION TO THE BOARD AT THE HEARING ON MARCH 15TH.

3. BY LETTER, DATED MARCH 28TH, 1966, COUNSEL FOR THE INTERVENER INFORMED THE BOARD THAT THE INTERVENER WAS ABANDONING ITS INTERVENTION, AND FURTHER IT WAS NO LONGER REPRESENTING EMPLOYEES WHO HAD FILED STATEMENTS OF DESIRE.

4. HAVING REGARD TO THE POSITION NOW TAKEN BY THE INTERVENER, THERE IS NO LONGER ANY NEED TO CONSIDER THE APPLICANT'S REQUEST IN SO FAR AS IT RELATES TO THE STATUS OF THE INTERVENER. IN SO FAR AS THE REQUEST DEALS WITH LEAVE TO FILE ALLEGATIONS RESPECTING THE STATEMENTS OF DESIRE, WE FAIL TO UNDERSTAND HOW THE APPLICANT CAN ASK THE BOARD TO RECONSIDER A DECISION WHICH IT DID NOT MAKE. WHEN COUNSEL MADE HIS REQUEST AT THE HEARING THE SOLE MATTER BEING CONSIDERED BY THE BOARD WAS THE STATUS OF THE INTERVENER. INQUIRIES INTO THE STATEMENTS OF OBJECTION FILED BY EMPLOYEES HAD NOT COMMENCED. FURTHERMORE THE ARGUMENT OF COUNSEL IN ITS LETTER OF MARCH 18TH IS CLEARLY DIRECTED TO THE STATUS QUESTION. SEE IN PARTICULAR THE FIRST PARAGRAPH ON PAGE 3 OF THE LETTER. HOWEVER, EVEN IF WE WERE TO CONSIDER THIS REQUEST AS A NEW MOTION, THERE ARE NO CIRCUMSTANCES IN THIS CASE WHICH, IN OUR VIEW, JUSTIFY THE BOARD GRANTING LEAVE TO FILE SUCH ALLEGATIONS. THIS MATTER CAME ON FOR HEARING ON MARCH 10TH AND AN ADJOURNMENT WAS GRANTED TO THE INTERVENER IN ORDER TO SECURE THE SERVICES OF A SOLICITOR. AT THAT TIME THE APPLICANT HAD ALREADY HAD NOTICE THAT EMPLOYEES WERE OBJECTING TO THE APPLICATION. THE APPLICANT WAS NOT REPRESENTED BY COUNSEL AT THE FIRST HEARING. WHEN THE HEARING RESUMED ON MARCH 11TH THE APPLICANT WAS AGAIN NOT REPRESENTED BY COUNSEL. IT WAS NOT UNTIL THE AFTERNOON OF MARCH 15TH THAT COUNSEL APPEARED ON BEHALF OF THE APPLICANT AND IT WAS NOT UNTIL LATE IN THE AFTERNOON THAT THE ORIGINAL MOTION WAS MADE.

5. IN OUR VIEW AND IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, THE APPLICANT HAD AMPLE TIME TO OBTAIN THE SERVICES OF A SOLICITOR AND CERTAINLY HAD AMPLE TIME TO INVESTIGATE THE CIRCUMSTANCES SURROUNDING THE FILING OF THE STATEMENTS OF OBJECTION. WE SEE NO MITIGATING CIRCUMSTANCES HERE AND ACCORDINGLY WOULD, IN ANY EVENT, HAVE REFUSED LEAVE TO THE APPLICANT TO FILE ALLEGATIONS RESPECTING THE SAME STATEMENTS OF DESIRE EVEN IF THAT MOTION HAD BEEN MADE AT THE HEARING OF MARCH 15TH.

6. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING.

11448-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) v. VILLAGE CONTRACTORS (RESPONDENT) AND BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1 (INTERVENER) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (APRIL 20, 1966).

BY LETTER DATED APRIL 15, 1966 THE APPLICANT HAS, IN EFFECT, REQUESTED THE BOARD TO RECONSIDER THE DENIAL BY THE BOARD ON APRIL 4, 1966 OF THE APPLICANT'S REQUEST FOR RECONSIDERATION OF THE BOARD'S DECISION OF MARCH 17, 1966, IN WHICH THE APPLICANT WAS REFUSED LEAVE TO FILE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT. SUCH A SITUATION WAS CONSIDERED BY McRUER, C. J. H. C. IN UNITED STEELWORKERS OF AMERICA V. INTERNATIONAL NICKEL CO. OF CANADA ET AL, (1964) 41 D.L.R. 456; [1964] 1 O.R. 173, 64 C.L.L.C., ¶15,493 AT PAGE 817. THE MATTERS ON WHICH THE APPLICANT INTENDS TO RELY CANNOT BE CONSIDERED AS NEW EVIDENCE. IT WAS OPEN TO THE APPLICANT AT AN EARLIER TIME TO MAKE THE ALLEGATIONS IT NOW SEEKS TO MAKE NOT ONLY IN CONNECTION WITH THE STATEMENTS OF DESIRE FILED BY EMPLOYEES BUT IN SUPPORT OF A MOTION UNDER SECTION 7 (5) OF THE LABOUR RELATIONS ACT. IT FAILED TO DO SO AND HAS FAILED TO GIVE ANY EXPLANATION AS TO WHY IT DID NOT DO SO. THERE IS, THEREFORE, NOTHING IN THE APPLICANT'S LETTER OF APRIL 15, 1966 WHICH WOULD CAUSE THE BOARD TO REVOKE ITS DECISION OF APRIL 4, 1966.

HOWEVER ALLEGATIONS A, B AND C AS SET OUT ON PAGE 3 OF THE LETTER OF APRIL 15, 1966 CLEARLY CONSTITUTE NEW EVIDENCE NOT HERETOFORE AVAILABLE TO THE APPLICANT AND IT IS THE INTENTION OF THE BOARD TO PERMIT THE APPLICANT TO ADDUCE EVIDENCE RELATING TO THESE ALLEGATIONS AT THE HEARING SCHEDULED FOR APRIL 25, 1966, SUBJECT TO ANY FURTHER REPRESENTATIONS THE RESPONDENT MAY MAKE AT THE COMMENCEMENT OF THE HEARING.

REQUEST FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79A

11338-65-M: BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, (AFFILIATED WITH BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION A.F. OF L. C.I.O. C.L.C. (TRADE UNION) V. THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR (EMPLOYER).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDERMOTT.

DECISION OF THE BOARD: (APRIL 6, 1966).

1. AFTER THE ISSUING OF THE BOARD'S ENDORSEMENT IN THIS MATTER, DATED MARCH 14TH, 1966, THE BOARD WAS ADVISED BY THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, WHICH HAD PARTICIPATED IN THE PROCEEDINGS IN THIS MATTER, THAT AN ERROR APPEARED IN PARAGRAPH 7 OF THE BOARD'S ENDORSEMENT, WHEREIN THE BOARD STATED ITS CONCLUSION THAT:

IT IS OUR VIEW, THEREFORE, THAT BUILDING SERVICE EMPLOYEES UNION, LOCAL 210 CONTINUES TO BE THE BARGAINING AGENT FOR ALL EMPLOYEES OF THE EMPLOYER WITHIN THE FORMER MUNICIPAL BOUNDARIES OF THE TOWN OF RIVERSIDE IN ITS CARETAKING AND MAINTENANCE STAFF, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE

THE RANK OF SUPERVISOR AND PART-TIME EMPLOYEES WORKING LESS THAN 24 HOURS A WEEK, AND THAT BUILDING SERVICE EMPLOYEES UNION, LOCAL 210 CONTINUES TO BE BARGAINING AGENT OF ALL EMPLOYEES OF THE EMPLOYER WITHIN THE FORMER MUNICIPAL BOUNDARIES OF THE TOWNSHIPS OF SANDWICH EAST AND SANDWICH WEST, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PROBATIONARY EMPLOYEES AND PART-TIME EMPLOYEES WORKING LESS THAN 6 HOURS A DAY.

COPIES OF THE LETTER FROM "RETAIL, WHOLESALE" WERE SENT TO THE BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, AND TO THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR, APPEARING AS PARTIES TO THIS REFERENCE. IN REPLY, THE BOARD WAS ADVISED BY LETTER FROM THE SOLICITOR FOR THE TRADE UNION:

MY CLIENTS REPRESENTED THE EMPLOYEES OF THE CATHOLIC SCHOOL BOARDS OF BOTH RIVERSIDE AND SANDWICH SOUTH AND SANDWICH WEST. YOUR DECISION SHOULD BE AMENDED TO INCLUDE THE SEPARATE SCHOOL BOARDS OF THE TOWNSHIPS OF SANDWICH SOUTH AND WEST AND ALSO RIVERSIDE. THE SANDWICH EAST BOARD EMPLOYEES SHOULD BE EXCLUDED.

THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION HAVE ADVISED THE BOARD OF THEIR AGREEMENT WITH THE STATEMENT OF THE SOLICITOR FOR THE TRADE UNION. THE BOARD WAS FURTHER ADVISED BY LETTER FROM THE SOLICITORS FOR THE EMPLOYER THAT:

THE BARGAINING AGENT FOR THE RELEVANT EMPLOYEES OF THE WINDSOR AND SANDWICH EAST SEPARATE SCHOOL BOARDS WAS THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 519, WHEREAS THE BARGAINING AGENT FOR THE EMPLOYEES OF THE RIVERSIDE AND SANDWICH WEST SEPARATE SCHOOL BOARDS WAS THE BUILDING SERVICE EMPLOYEES UNION, LOCAL 210.

21. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND HAVING REVIEWED ITS OWN RECORDS, THE BOARD AMENDS PARAGRAPH 7 OF THE ENDORSEMENT ON THE RECORD OF THE MATTER, DATED MARCH 14TH, 1966, BY REVOKING THE LAST SENTENCE OF THAT PARAGRAPH AND SUBSTITUTING THE FOLLOWING THEREFOR:

IT IS OUR VIEW, THEREFORE, THAT BUILDING SERVICE EMPLOYEES UNION, LOCAL 210 CONTINUES TO BE THE BARGAINING AGENT FOR ALL EMPLOYEES OF THE EMPLOYER WITHIN THE FORMER MUNICIPAL BOUNDARIES OF THE TOWN OF RIVERSIDE IN ITS CARETAKING AND MAINTENANCE STAFF, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PART-TIME EMPLOYEES WORKING LESS THAN 24 HOURS A WEEK AND THAT BUILDING SERVICE EMPLOYEES UNION, LOCAL 210 CONTINUES TO BE THE BARGAINING AGENT FOR ALL EMPLOYEES OF THE EMPLOYER WITHIN THE FORMER MUNICIPAL BOUNDARIES OF THE TOWNSHIPS OF SANDWICH SOUTH AND SANDWICH WEST, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PROBATIONARY EMPLOYEES AND PART-TIME EMPLOYEES WORKING LESS THAN SIX HOURS A DAY.

3. BY THEIR LETTER, DATED MARCH 30TH, 1966, AND IN A FURTHER LETTER, DATED APRIL 1ST, 1966, THE SOLICITORS FOR THE EMPLOYER REQUESTED THE BOARD TO RECONSIDER ITS DECISION IN THIS MATTER. SINCE, FOR THE REASONS SET OUT BELOW, THE BOARD IS OF OPINION THAT THESE LETTERS DO NOT SET OUT SUFFICIENT GROUNDS ON WHICH TO GRANT RECONSIDERATION, AND SINCE, IN ANY EVENT, THE RELIEF SOUGHT BY THE EMPLOYER WOULD BE AVAILABLE TO IT, IN A PROPER CASE, IN THE APPLICATION REFERRED TO IN PARAGRAPH 7 BELOW, IT IS NOT NECESSARY FOR THE BOARD TO ENTERTAIN THE SUBMISSIONS OF THE OTHER PARTIES WITH RESPECT TO THE EMPLOYER'S REQUEST FOR RECONSIDERATION.

4. IN ITS REQUEST FOR RECONSIDERATION, THE EMPLOYER HAS STATED THAT THE ERROR CORRECTED BY PARAGRAPH 2 OF THIS ENDORSEMENT VITIATES THE BOARD'S DECISION IN THIS MATTER. THERE IS NO SUBSTANCE TO THIS ARGUMENT. AT THE HEARING IN THIS MATTER, THE BOARD RECEIVED EVIDENCE THAT "BUILDING SERVICE", THE TRADE UNION IN THIS REFERENCE, WAS PARTY TO A COLLECTIVE AGREEMENT WITH THE BOARD OF COMBINED ROMAN CATHOLIC SEPARATE SCHOOLS OF SANDWICH WEST AND TO A COLLECTIVE AGREEMENT WITH THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE TOWN OF RIVERSIDE, AND THAT "RETAIL, WHOLESALE" WAS PARTY TO A COLLECTIVE AGREEMENT WITH THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS OF THE CITY OF WINDSOR. COPIES OF THESE AGREEMENTS WERE FILED WITH THE BOARD. THE BOARD WAS ADVISED BY COUNSEL THAT THE AGREEMENT BETWEEN BUILDING SERVICE AND THE BOARD OF COMBINED ROMAN CATHOLIC SEPARATE SCHOOLS OF SANDWICH WEST COVERED AS WELL EMPLOYEES IN ROMAN CATHOLIC SEPARATE SCHOOLS IN SANDWICH SOUTH. IN ERROR, THIS UNDISPUTED FACT APPEARED IN THE ENDORSEMENT, DATED MARCH 14TH, AS A REFERENCE TO SANDWICH EAST RATHER THAN TO SANDWICH SOUTH. THIS ERROR IS CORRECTED IN PARAGRAPH 2 OF THIS ENDORSEMENT. IT INVOLVES NO OTHER COLLECTIVE AGREEMENT THAN THOSE REFERRED TO AND RAISES NO NEW CONSIDERATIONS, BEING MERELY THE CORRECTION OF AN ERROR OF TRANSCRIPTION ON THE BOARD'S PART.

5. THE EMPLOYER FURTHER ARGUED THAT OPPORTUNITY SHOULD BE AFFORDED FOR THE PRESENTATION OF EVIDENCE RELATING TO THE INTERMINGLING OF EMPLOYEES OF THE EMPLOYER. AT THE HEARING IN THIS MATTER, COUNSEL FOR THE EMPLOYER STATED THAT THERE HAD BEEN NO INTERMINGLING OF EMPLOYEES. WHEN ALL EVIDENCE AND STATEMENTS RELATING TO THE FACTS, INCLUDING THE STATEMENT OF COUNSEL FOR THE EMPLOYER, JUST REFERRED TO, HAD BEEN RECEIVED, THE PARTIES WERE ASKED IF THERE WERE ANY FURTHER FACTS TO BE PUT BEFORE THE BOARD. ALL PARTIES AGREED THAT THERE WERE NONE AND THE BOARD PROCEEDED TO HEAR ARGUMENT. FOLLOWING THE PRESENTATION OF ARGUMENT BY COUNSEL FOR THE TRADE UNION, COUNSEL FOR THE EMPLOYER THEN SOUGHT TO MAKE A FURTHER STATEMENT OF FACT WITH RESPECT TO THE INTERMINGLING OF EMPLOYEES. TO THIS COUNSEL FOR THE TRADE UNION OBJECTED AND THE OBJECTION WAS SUSTAINED BY THE BOARD. IT WAS QUITE CLEAR IN THE CIRCUMSTANCES THAT THIS WAS NOT THE SORT OF CASE IN WHICH LEAVE TO ADDUCE FURTHER EVIDENCE SHOULD BE GRANTED. NOTHING IN THE LETTERS OF THE SOLICITORS FOR THE EMPLOYER PERSUADES US THAT THAT RULING WAS NOT CORRECT OR THAT IT CONSTITUTES, AS IS SUGGESTED, A DENIAL OF NATURAL JUSTICE. INDEED, IT WOULD HAVE BEEN CONTRARY TO ANY PRINCIPLE OF ORDERLY PROCEDURE FOR THE BOARD TO HAVE RULED OTHERWISE IN THE CIRCUMSTANCES. IN ANY EVENT, AS THE BOARD NOTED IN PARAGRAPH 8 OF ITS ENDORSEMENT, DATED MARCH 14TH, 1966, THIS MATTER CAME TO THE BOARD ON A REFERENCE FROM THE MINISTER AND NOT BY WAY OF APPLICATION PURSUANT TO SECTION 47A OF THE LABOUR RELATIONS ACT. IT WOULD APPEAR NOT TO HAVE BEEN OPEN TO THE BOARD TO CONSIDER THE QUESTION OF INTERMINGLING OF EMPLOYEES IN PROCEEDINGS BROUGHT BY WAY OF REFERENCE FROM THE MINISTER.

6. FOR THE ABOVE REASONS, THE EMPLOYER'S REQUEST THAT THE BOARD RECONSIDER ITS DECISION IS DENIED.

7. BY LETTER, DATED MARCH 30TH, 1966, THE SOLICITORS FOR THE EMPLOYER HAVING (1) MADE STATEMENTS WITH RESPECT TO THE LETTER, DATED MARCH 9TH, 1966, FROM THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION (WHICH STATEMENTS THE BOARD HAS CONSIDERED), AND (2) HAVING REQUESTED RECONSIDERATION OF THE BOARD'S DECISION SET OUT IN ITS ENDORSEMENT OF MARCH 14TH, 1966, (WHICH REQUEST IS DENIED), HAVE FURTHER REQUESTED THAT THEIR LETTER BE TREATED AS AN APPLICATION PURSUANT TO SECTION 47A OF THE LABOUR RELATIONS ACT. SUCH AN APPLICATION, OF COURSE, IS A NEW MATTER AND DOES NOT FORM A PART OF THE PROCEEDINGS ON THIS REFERENCE. IT WILL, THEREFORE BE REFERRED TO THE REGISTRAR TO BE PROCESSED IN THE NORMAL COURSE.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

THE FOLLOWING EXCERPTS FROM DECISIONS ISSUED IN CONSTRUCTION INDUSTRY CASES ARE REPORTED FOR THE INFORMATION OF THE PUBLIC.

11066-65-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) V. V. K. MELHORN (RESPONDENT).

2. ... THE BOARD FINDS THAT J. LEBOEUF WOULD NOT BE INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT BECAUSE HE WAS NOT AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION (SEE CHILMAN CONSTRUCTION COMPANY LIMITED, SEPTEMBER 1965, BOARD FILE NO. 10768-65-R).

3. WITH RESPECT TO RESPONDENT'S SUBMISSION THAT HE HAD PLANNED ON INCREASING THE WORK FORCE OF ELECTRICIANS, THIS IS A MATTER FOR THE BOARD'S DISCRETION IN CONSTRUCTION INDUSTRY CASES. SEE SECTION 92 (2) OF THE LABOUR RELATIONS ACT. IT HAS NOT BEEN THE USUAL PRACTICE OF THE BOARD TO HAVE REGARD FOR "BUILD-UP" IN SUCH CASES AND THERE IS NOTHING BEFORE US IN THIS CASE WHICH IN OUR OPINION WOULD WARRANT OUR TAKING SUCH A FACTOR INTO CONSIDERATION.

(JANUARY 12, 1966).

11248-65-R: THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. THE TATHAM COMPANY LIMITED (RESPONDENT).

6. ALTHOUGH THE RESPONDENT HAS PROPOSED A BARGAINING UNIT WHICH DOES NOT INCLUDE "THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT", THIS IS A REGULAR PART OF THE BARGAINING UNIT NORMALLY GRANTED TO THE APPLICANT UNION AND WE SEE NO REASON FOR DEPARTING THEREFROM IN THE PRESENT CASE. IN OTHER WORDS WHETHER THERE ARE AT PRESENT EMPLOYEES FALL INTO THIS CLASSIFICATION OR NOT, THE BOARD WOULD INCLUDE SUCH CLASSIFICATION IN ITS DESCRIPTION OF THE BARGAINING UNIT. THE BOARD, THEREFORE, FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LUDLOW, GRIMSTHORPE, MARMORA, MADOC, ELZEVR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, ENGAGED IN

THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(JANUARY 7, 1966).

11280-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL UNION #721 (APPLICANT) V. CHUBB-MOSLER AND TAYLOR SAFES LTD. (RESPONDENT) V. LOCAL 678 INTERNATIONAL CHEMICAL WORKERS UNION (INTERVENER).

2. AT THE HEARING IN THIS MATTER THE APPLICANT APPLIED TO EXTEND THE TERMINAL DATE FOR THE PURPOSE OF PERMITTING THE RESPONDENT TO FILE FURTHER LISTS OF EMPLOYEES AND ALSO FOR THE PURPOSE OF PERMITTING THE APPLICANT TO FILE FURTHER EVIDENCE OF MEMBERSHIP. IT IS APPARENT THAT THE APPLICANT DOES NOT HAVE SUCH EVIDENCE OF MEMBERSHIP AT THE PRESENT TIME AND THE PURPOSE FOR EXTENDING THE TERMINAL DATE WOULD BE TO PERMIT IT TO GO OUT AND ORGANIZE OTHER EMPLOYEES OF THE RESPONDENT. THE BOARD HAS BEEN VERY RIGID IN ITS APPLICATION OF SECTION 50 OF ITS RULES OF PROCEDURE DEALING WITH THE TIME WHEN EVIDENCE AS TO REPRESENTATION IN A TRADE UNION MUST BE FILED IN AN APPLICATION FOR CERTIFICATION AND THE BOARD CAN SEE NO JUSTIFICATION IN THE CIRCUMSTANCES OF THE PRESENT CASE FOR EXTENDING THE TERMINAL DATE TO PERMIT THE FILING OF SUCH EVIDENCE. SHOULD IT BECOME NECESSARY FOR THE RESPONDENT TO FILE A FURTHER LIST OF EMPLOYEES AND SPECIMEN SIGNATURES, THIS IS A MATTER THAN CAN BE DEALT WITH AT A LATER STAGE IN THE PROCEEDINGS. THE MOTION BY THE APPLICANT TO EXTEND THE TERMINAL DATE IS ACCORDINGLY DENIED.

(JANUARY 27, 1966).

11312-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 1036 (APPLICANT) V. GERARD BUILDERS OF NORTH BAY LIMITED (RESPONDENT).

6. IN CONSIDERING THE MEMBERSHIP POSITION OF THE APPLICANT IN CONSTRUCTION INDUSTRY CASES, PERSONS NOT AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION ARE NOT COUNTED.

(JANUARY 31, 1966).

11368-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA A.F.L. C.I.O. C.L.C. (APPLICANT) V. DROGE CONSTRUCTION LTD. (RESPONDENT).

5. THE APPLICANT HAS PROPOSED THE COUNTIES OF MIDDLESEX, OXFORD, ELGIN, PERTH, HURON, BRUCE AND GREY AS AN APPROPRIATE GEOGRAPHIC AREA. HAVING REGARD TO THE FACT THAT THE LOCATION OF THE SITE OF THE JOB IS AT OWEN SOUND, THE BOARD IS NOT PREPARED TO GRANT THE GEOGRAPHIC AREA PROPOSED BY THE APPLICANT NOR IS IT PREPARED AT THIS TIME TO ESTABLISH A NEW GEOGRAPHIC AREA WHICH WOULD INCLUDE ALL OF THE COUNTY OF GREY. AS A PURELY INTERIM MEASURE, HOWEVER, THE BOARD FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY (EXCEPTING THEREFROM THE TOWNSHIPS OF NORMANBY, EGREMONT AND PROTON), SAVE

AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(FEBRUARY 15, 1966).

11414-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 597 (APPLICANT) v. MOLLENHAUER COMPANY LIMITED (RESPONDENT).

1. THE FACT THAT A JOB AFFECTED BY THE APPLICATION MAY BE FINISHED OR MAY BE CLOSE TO TERMINATION AFTER THE FILING OF AN APPLICATION FOR CERTIFICATION IS NOT A FACTOR WHICH THIS BOARD TAKES INTO CONSIDERATION IN REACHING A DECISION ON SUCH AN APPLICATION. REFERENCE IS MADE TO THE NADECO LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1964, P. 608. HAVING REGARD TO THE ABOVE AND TO THE FACT THAT THE AREA BEING GRANTED IS THAT REQUESTED BY THE RESPONDENT AND HAVING REGARD TO THE FACT THAT A VOTE IS BEING DIRECTED IN THIS CASE THE BOARD DOES NOT DEEM IT ADVISABLE TO HOLD A HEARING.

(FEBRUARY 25, 1966).

ERRATUM

11191-65-R: THE FIRECO EMPLOYEES' ASSOCIATION (APPLICANT) v. FIRECO SALES LIMITED (RESPONDENT) REPORTED ON PAGES 814 AND 815 OF THE FEBRUARY 1966 MONTHLY REPORT.

LINE 1, PARAGRAPH 4, OF BOARD MEMBER G. RUSSELL HARVEY'S DECISION (PAGE 815) SHOULD HAVE READ:

"I WOULD NOT GRANT UNION STATUS FOR THE PURPOSES OF THE ACT ..."
OF: "I WOULD GRANT UNION STATUS FOR THE PURPOSES OF THE ACT ..."

STATISTICAL TABLES FOR APRIL 1966

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	APRIL 1966	1ST MONTH OF 1966-67	FISCAL YEAR 1965-66
I. CERTIFICATION	86	86	106
II. DECLARATION TERMINATING BARGAINING RIGHTS	5	5	5
III. DECLARATION OF SUCCESSOR STATUS	-	-	-
IV. DECLARATION THAT STRIKE UNLAWFUL	3	3	3
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	-	-
VI. CONSENT TO PROSECUTE	17	17	5
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	5	5	11
VIII. MISCELLANEOUS	<u>4</u>	<u>4</u>	<u>10</u>
TOTAL	<u>110</u>	<u>110</u>	<u>142</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	APRIL 1966	1ST MONTH OF 1966-67	FISCAL YEAR 1965-66
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	54	54	106

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY MAJOR TYPES

		NUMBER DISPOSED OF		
		APRIL 1ST	MONTH OF	FISCAL YEAR
		1966	1966-67	1965-66
I.	CERTIFICATION	66	66	90
II.	DECLARATION TERMINATING BARGAINING RIGHTS	4	4	2
III.	DECLARATION OF SUCCESSOR STATUS	-	-	4
IV.	DECLARATION THAT STRIKE UNLAWFUL	3	3	1
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	-	-
VI.	CONSENT TO PROSECUTE	4	4	2
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	6	6	9
VIII.	MISCELLANEOUS	<u>5</u>	<u>5</u>	<u>26</u>
	TOTAL	<u>88</u>	<u>88</u>	<u>134</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>APRIL 1966</u>	<u>1ST MONTH OF FISCAL YR. 1966-67</u>	<u>1965-66</u>	<u>APRIL 1966</u>	<u>1ST MONTH OF FISCAL YR. 1966-67</u>	<u>1965-66</u>
I. <u>CERTIFICATION</u>						
GRANTED	45	45	75	925	925	2841
DISMISSED	13	13	10	900	900	241
WITHDRAWN	8	8	5	195	195	124
TOTAL	66	66	90	2020	2020	3206
	==	==	==	==	==	==
II. <u>TERMINATION</u>						
<u>OF BARGAINING</u>						
<u>RIGHTS</u>						
GRANTED	3	3	-	212	212	-
DISMISSED	1	1	2	30	30	26
WITHDRAWN	-	-	-	-	-	-
TOTAL	4	4	2	242	242	26
	==	==	==	==	==	==

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
		APRIL	1ST	MONTH OF FISCAL YEAR
		1966	1966-67	1965-66
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	-
	WITHDRAWN	<u>3</u>	<u>3</u>	<u>1</u>
	TOTAL	<u>3</u>	<u>3</u>	<u>1</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	-
	WITHDRAWN	<u>-</u>	<u>-</u>	<u>-</u>
	TOTAL	<u>-</u>	<u>-</u>	<u>-</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	-	-	1
	DISMISSED	-	-	-
	WITHDRAWN	<u>4</u>	<u>4</u>	<u>1</u>
	TOTAL	<u>4</u>	<u>4</u>	<u>2</u>

TABLE V

REPRESENTATION VOTES RESULTING IN CERTIFICATION OR DISMISSAL OF CERTIFICATION
APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	APRIL 1966	1ST MONTH OF FISCAL YEAR 1966-67	1965-66
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	1	1	3
POST-HEARING VOTE	3	3	1
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	-	-
POST-HEARING VOTE	4	4	2
BALLOTS NOT COUNTED	-	-	1
TOTAL	8	8	7

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND WITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE IV

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	APRIL 1966	1ST MONTH OF FISCAL YEAR 1966-67	1965-66
RESPONDENT UNION SUCCESSFUL	-	-	-
RESPONDENT UNION UNSUCCESSFUL	3	3	-
TOTAL	3	3	-

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING MAY 1966

BARGAINING AGENTS CERTIFIED DURING MAY

NO VOTE CONDUCTED

11492-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) (APPLICANT) V. DUPLATE CANADA LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT WINDSOR SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, BUYER, PLANT NURSE, PRIVATE SECRETARY TO THE OFFICE MANAGER AND PRIVATE SECRETARY TO THE PERSONNEL MANAGER." (11 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11509-65-R: LOCAL 403 OF THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, A.F.L.-C.I.O.; C.L.C. (APPLICANT) V. CANADIAN CANNERS LIMITED, FACTORY #24 (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS FACTORY NUMBER 24 AT WATERFORD, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, LABORATORY STAFF, SEASONAL EMPLOYEES AND FIELDMEN." (38 EMPLOYEES IN THE UNIT).

11526-65-R: INTERNATIONAL WOODWORKERS OF AMERICA, (APPLICANT) V. HANFORD LUMBER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (30 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 112).

11542-65-R: LOCAL UNION 804, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (APPLICANT) V. PUBLIC UTILITIES COMMISSION OF GALT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GALT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (37 EMPLOYEES IN THE UNIT).

11550-65-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. CAULFEILD BURNS AND GIBSON LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF." (52 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 115).

11575-65-R: BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA, LO
UNION 1630 (SIGN & PICTORIAL) (APPLICANT) V. SLIMLITE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(49 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 116).

11576-65-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION A.F.L.-C.I.O.-C.L.C.
(APPLICANT) V. ROBINSON INDUSTRIAL - CRAFTS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (58 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

FOR THE PURPOSE OF CLARITY AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD DECLARED THAT THE TERM "FOREMEN" INCLUDES "FORELADIES".

11587-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. METCALFE REALTY COMPANY LIMITED (RESPONDENT) V. CANADIAN CONSTRUCTION WORKERS UNION, DIV. NO. 1, N.C.C.L. (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT 151 SLATER STREET, OTTAWA, SA AND EXCEPT ASSISTANT SUPERVISOR AND PERSONS ABOVE THE RANK OF ASSISTANT SUPERVISOR." (5 EMPLOYEES IN THE UNIT).

11593-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. UNIVERSITY OF WINDSOR (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN PERSONS ABOVE THE RANK OF FOREMAN, STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS, SECURITY GUARDS, STUDENTS EMPLOYED DURING VACATION PERIODS, STUDENTS ENGAGED IN OFFICE AND ADMINISTRATIVE DEPARTMENTS, TEACHING PERSONNEL AND ACADEMIC TECHNICIANS, PERSONS EMPLOYED FOR NOT MORE THAN 20 HOURS PER WEEK, OFFICE STAFF, AND THOSE EMPLOYEES OF THE RESPONDENT COVERED BY THE BOARD'S CERTIFICATE ISSUED TO CANADIAN UNION OF OPERATING ENGINEERS ON APRIL 1, 1966." (123 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE CLASSIFICATION "OFFICE STAFF" INCLUDES EQUIPMENT MANAGER IN ATHLETIC OFFICE AND HIS HELPERS, CLERKS, TYPISTS AND BUSINESS MACHINE OPERATORS ENGAGED IN OFFICES AND PERSONS EMPLOYED IN COMPUTER CENTER, INCLUDING KEY PUNCH OPERATORS AND PROGRAMMERS, DEPARTMENT HEADS AND CATALOGUERS, CASHIERS AND CLERK EMPLOYED IN UNIVERSITY LIBRARY, ANIMAL ROOM ATTENDANTS ENGAGED IN PSYCHOLOGY AND BIOLOGY DEPARTMENTS,

DRAFTSMEN ENGAGED IN OFFICE OF ENGINEERING SERVICES, SWITCHBOARD OPERATORS, PROJECTIONISTS AND OTHER TECHNICIANS ENGAGED IN AUDIO VISUAL WORK, CLERKS, CASHIERS AND PERSONS ENGAGED IN BOOK STORE, CLERKS AND MAIL CARRIERS ENGAGED IN POST OFFICE AND STATIONERY STORES, CASHIERS IN ACCOUNTING OFFICE, OPERATORS ENGAGED IN DUPLICATING SERVICES, PERSONS EMPLOYED IN UNIVERSITY HEALTH OFFICE, TECHNICIANS ENGAGED IN OFFICE OF COMMUNICATIONS SERVICES.

11598-66-R: RETAIL STORE EMPLOYEES UNION, LOCAL NO. 832 (APPLICANT) V. PROUDFOOT'S DEPARTMENT STORE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DRYDEN, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

11601-66-R: RETAIL STORE EMPLOYEES UNION, LOCAL NO. 832 (APPLICANT) V. PROUDFOOT'S DEPARTMENT STORE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DRYDEN REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT STORE MANAGERS AND PERSONS ABOVE THE RANK OF STORE MANAGERS." (5 EMPLOYEES IN THE UNIT).

11605-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC. (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS CASH AND CARRY OPERATIONS AT ST. THOMAS, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

11615-66-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. MURRAY PRINTING & GRAVURE LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE PHRASE "PERSONS PRIMARILY ENGAGED AS THEIR HELPERS" DOES NOT INCLUDE ANY PERSONS PRESENTLY COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND OTHER BARGAINING AGENTS.

11617-66-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION (APPLICANT) V. AMERICAN CAN COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MALTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (14 EMPLOYEES IN THE UNIT).

11618-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. EATON PRECISION PRODUCTS CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WALLACEBURG, SAVE AND EXCEPT FOREMEN PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (71 EMPLOYEES IN THE UNIT).

11619-66-R: SHOPMEN'S LOCAL UNION No. 757 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFFILIATED WITH THE AFL-CIO, CLC (APPLICANT) V. KAWNEER COMPANY CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SECURITY GUARDS, PERSONS ENGAGED IN FIELD ERECTION AND INSTALLATION WORK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT EFFECTIVE AUGUST 16TH, 1965." (5 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT SHOP CLERKS AND RESEARCH AND DEVELOPMENT PERSONNEL ARE NOT INCLUDED IN THE BARGAINING UNIT.

11623-66-R: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. HERB. PAYNE TRANSPORT CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF PETERBORO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (34 EMPLOYEES IN THE UNIT).

11625-66-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. NORTH BAY CONCRETE SUPPLY CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

11638-66-R: THE HOTEL & RESTAURANT EMPLOYEE'S AND BARTENDERS INTERNATIONAL UNION LOCAL 412 A.F. OF L.,-C.I.O.,-C.L.C. (APPLICANT) V. THE CANADIAN MOTOR HOTEL (SAULT STE-MARIE) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL WAITERS, BARTENDERS AND TAPMEN IN THE EMPLOY OF THE RESPONDENT IN THE BEVERAGE ROOMS AND COCKTAIL LOUNGE OF ITS CANADIAN MOTOR HOTEL AT SAULT STE. MARIE, SAVE AND EXCEPT THE ASSISTANT MANAGER OF THE BEVERAGE ROOMS AND THE MANAGER OF THE COCKTAIL LOUNGE AND PERSONS ABOVE THOSE RANKS, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (11 EMPLOYEES IN THE UNIT).

11639-66-R: UPHOLSTERERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. ALLAN BEDDING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT EFFECTIVE FROM JULY 1ST, 1965." (23 EMPLOYEES IN THE UNIT).

11645-66-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 141 (APPLICANT) V. ALCAN COLONY CONTRACTORS (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (3 EMPLOYEES IN THE UNIT).

11646-66-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL No. 91, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. HOFFMAN CONCRETE PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT AT ARNPRIOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

11650-66-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL UNION 46 ORGANIZING DIVISION (APPLICANT) V. SPACE CONDITIONING OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN OIL BURNER SERVICE AND INSTALLATION WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT SERVICE MANAGER, PERSONS ABOVE THE RANK OF SERVICE MANAGER AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY THE BOARD DECLARED THAT THE DISPATCHER IS NOT AN EMPLOYEE INCLUDED IN THE BARGAINING UNIT.

11653-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BROCK UNIVERSITY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SECURITY GUARDS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, STUDENTS ENGAGED IN OFFICE AND ADMINISTRATIVE DEPARTMENTS, TEACHING PERSONNEL, ACADEMIC TECHNICIANS, PERSONS REGULARLY EMPLOYED FOR NOT MORE TWENTY-FOUR HOURS PER WEEK AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE CLASSIFICATION "OFFICE STAFF" INCLUDES EQUIPMENT MANAGER IN ATHLETIC OFFICE AND HIS HELPERS, CLERKS, TYPISTS AND BUSINESS MACHINE OPERATORS ENGAGED IN OFFICES AND PERSONS EMPLOYED IN COMPUTER CENTER, INCLUDING KEY PUNCH OPERATORS AND PROGRAMMERS, DEPARTMENT HEADS AND CATALOGUERS, CASHIERS AND CLERKS EMPLOYED IN UNIVERSITY LIBRARY, ANIMAL ROOM ATTENDANTS ENGAGED IN PSYCHOLOGY AND BIOLOGY DEPARTMENTS, DRAFTSMEN ENGAGED IN OFFICE OF ENGINEERING SERVICES, SWITCHBOARD OPERATORS, PROJECTIONISTS AND OTHER TECHNICIANS ENGAGED IN AUDIO VISUAL WORK, CLERKS, CASHIERS AND PERSONS ENGAGED IN BOOK STORE, CLERKS AND MAIL CARRIERS ENGAGED IN POST OFFICE AND STATIONERY STORES, CASHIERS IN ACCOUNTING OFFICE, OPERATORS ENGAGED IN DUPLICATING SERVICES, PERSONS EMPLOYED IN UNIVERSITY HEALTH OFFICE, TECHNICIANS ENGAGED IN OFFICE OF COMMUNICATIONS SERVICES.

11654-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. PARKE DAVIS & COMPANY, LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WAREHOUSE IN METROPOLITAN TORONTO SAVE AND EXCEPT WAREHOUSE MANAGER, PERSONS ABOVE THE RANK OF WAREHOUSE MANAGER AND OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

11655-66-R: INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA) (APPLICANT) V. KIDD COPPER MINES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE DEVELOPMENT STAGE OF ITS MINING OPERATIONS IN THE TOWNSHIP OF DENISON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (50 EMPLOYEES IN THE UNIT).

11658-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. GENERAL COACH WORKS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN WESTMINSTER TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND SECURITY GUARDS AND OFFICE AND SALES STAFF." (67 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT INSPECTORS ARE ABOVE THE RANK OF FOREMAN AND ACCORDINGLY ARE NOT INCLUDED IN THE BARGAINING UNIT AND THAT TECHNICAL PERSONNEL ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF.

11664-66-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MODERN BUILD AND CLEANING, DIVISION OF DUSTBANE ENTERPRISES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE CHELMSFORD VALLEY DISTRICT HIGH SCHOOL AT CHELMSFORD, SAVE AND EXCEPT SUPERVISORS, AND PERSONS ABOVE THE RANK OF SUPERVISOR." (9 EMPLOYEES IN THE UNIT).

11665-66-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. CLOVER LEAF FURNITURE CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (69 EMPLOYEES IN THE UNIT).

11666-66-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. CLOVER LEAF BEDDING CO. LTD. (RESPONDENT) V. UPHOLSTERERS' INTERNATIONAL UNION OF N.A. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (53 EMPLOYEES IN THE UNIT).

11668-66-R: KINGSTON PRINTING PRESSMEN AND ASSISTANTS' UNION NO. 482 (APPLICANT) V. MAXWELL PRINTERS & LITHOGRAPHERS LTD. (RESPONDENT).

UNIT: "ALL PRESSMEN, PRESSMEN'S ASSISTANTS AND THEIR APPRENTICES EMPLOYED IN THE PRESSROOM OF THE RESPONDENT AT ITS PLANT AT KINGSTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(4 EMPLOYEES IN THE UNIT).

11678-66-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION No. 493 (APPLICANT) V. BOULANGER & TREMBLAY CONSTRUCTION & SUPPLY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(6 EMPLOYEES IN THE UNIT).

11679-66-R: CANADIAN TRANSPORTATION WORKERS' UNION LOCAL 194, N.C.C.L. (APPLICANT) V. VICTORIA TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN AND DISPATCHERS, PERSONS ABOVE THE RANK OF FOREMAN AND DISPATCHER AND OFFICE STAFF."
(26 EMPLOYEES IN THE UNIT).

11680-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 27 (APPLICANT) V. TRICONT PROJECTS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY THE BOARD DECLARED THAT CARPENTERS WHO MAY SUBSEQUENTLY BE EMPLOYED BY THE RESPONDENT TO DO ORDINARY MAINTENANCE WORK WHEN THE PRESENT PROJECT IS COMPLETED ARE NOT INCLUDED IN THE BARGAINING UNIT.

(SEE INDEXED ENDORSEMENT PAGE 121).

11681-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. BILL SPROULE HEATING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN OIL BURNER SERVICE AND INSTALLATION EMPLOYED AT OR WORKING OUT OF BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

11682-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. BRAMPTON SHEET METAL LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN OIL BURNER SERVICE AND INSTALLATION EMPLOYED AT OR WORKING OUT OF BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

11684-66-R: RETAIL CLERKS UNION LOCAL 409 AFFILIATED WITH RETAIL CLERKS INTERNATIONAL ASSOCIATION AFL-CIO-CLC (APPLICANT) V. METROPOLITAN STORES OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR, SAVE AND EXCEPT ASSISTANT STORE MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, FLOORMEN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT MANAGEMENT TRAINEES AND PERSONS EMPLOYED ON A TEMPORARY OR CASUAL BASIS FOR THE CHRISTMAS AND EASTER SEASONS ARE NOT INCLUDED IN THE BARGAINING UNIT.

THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES THAT FLOOR-LADIES ARE INCLUDED IN THE BARGAINING UNIT.

11687-66-R: NURSES' ASSOCIATION BRANT COUNTY HEALTH UNIT (APPLICANT) V. BOARD OF HEALTH FOR BRANT COUNTY (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES, FULL TIME AND PART TIME, EMPLOYED BY THE RESPONDENT, SAVE AND EXCEPT ASSISTANT SUPERVISOR AND PERSONS ABOVE THE RANK OF ASSISTANT SUPERVISOR." (17 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11690-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1190 (APPLICANT) V. RETHATI & Co. LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A 25 MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

11693-66-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204 AFL-CIO C.L.C. (APPLICANT) V. STEVENSON MEMORIAL HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ALLISTON, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOOD SUPERVISORS, CHIEF ENGINEER, CHEF, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (34 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES LABORATORY TECHNICIANS, STUDENT LABORATORY TECHNICIANS, PHYSIOTHERAPISTS, X-RAY TECHNICIANS AND LABORATORY ASSISTANTS.

11695-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. UNIVERSITY OF TORONTO (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTER APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING IN AND OUT OF PHYSICAL PLANT DEPARTMENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE SPECIAL CIRCUMSTANCES OF THE INSTANT CASE).

11700-66-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. QUALITY RECORDS LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOM AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

11701-66-R: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, LOCAL #28 (APPLICANT) v. DANFORTH PRESS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL JOURNEYMEN AND JOURNEYWOMEN BOOKBINDERS AND THEIR APPRENTICES EMPLOYED BY THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (17 EMPLOYEES IN THE UNIT).

11702-66-R: INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS (APPLICANT) v. CHEMICAL VALLEY FABRICATING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RICHMOND HILL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (27 EMPLOYEES IN THE UNIT).

11708-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. HASTINGS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (27 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11714-66-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. GAMBLE ROBINSON LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS WAREHOUSE OPERATIONS AT OTTAWA, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (41 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11722-66-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 1036 (APPLICANT) v. ELCO CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN SAULT STE MARIE AND IN THE TOWNSHIP OF PRINCE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11727-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 9 (APPLICANT) v. B & H WOODWORKERS (CANADA) LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

11731-66-R: OPERATIVE PLASTERERS & CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION No. 124, OTTAWA AND HULL (APPLICANT) v. LUC PLASTERING & STUCCO CONTRACTOR (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

11753-66-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA (APPLICANT) v. CANAM CONSTRUCTION CORPORATION (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

11759-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL #1450 (APPLICANT) v. M. SULLIVAN & SON LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

11764-66-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 597 (APPLICANT) v. M. SULLIVAN & SON LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

11766-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) v. BANNF CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11767-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. KINELL CONSTRUCTION Co. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11774-66-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL No. 1036 (APPLICANT) V. PIEMONTE GENERAL CONTRACTORS LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN SAULT STE. MARIE AND IN THE TOWNSHIP OF PRINCE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11776-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124 (APPLICANT) V. ALLIED CONCRETE FORMING LTD. (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

11784-66-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 597 (APPLICANT) V. P. R. CONNOLLY CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

11785-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION #1450 (APPLICANT) V. P. R. CONNOLLY CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

11810-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 506 (APPLICANT) V. CANADIAN ENGINEERING & CONTRACTING Co. LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

11608-66-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. CANADA WIRE AND CABLE COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPER EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOMS AT ITS LEASIDE PLANTS, SAVE AND EXCEPT THE ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON VOTERS' LIST	17
NUMBER OF PERSONS WHO CAST BALLOTS	17
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	7

11616-66-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. VICTORY SOYA MILLS LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0

11634-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CLM INDUSTRIES - DIVISION OF MCGRAW-EDISON (CANADA) LTD. (RESPONDENT) V. THE EMPLOYEES ASSOCIATION OF CLM INDUSTRIES (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (288 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT INDUSTRIAL ENGINEERING, TIME STUDY, PERSONNEL AND ENGINEERS STAFFS, BEING PART OF THE OFFICE STAFF, ARE NOT INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	284
NUMBER OF PERSONS WHO CAST BALLOTS	282
NUMBER OF SPOILED BALLOTS	1

NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	159
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	122

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

10198-65-R: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. COLUMBIA METAL ROLLING MILLS LIMITED (RESPONDENT) v. SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION No. 233 (INTERVENER) v. SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION No. 30 (INTERVENER).

- AND -

10200-65-R: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. WESTEEL PRODUCTS LIMITED (RESPONDENT) v. SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION No. 30 (INTERVENER) v. SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION No. 233 (INTERVENER).

- AND -

10210-65-R: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. ROSCO METAL PRODUCTS LIMITED (RESPONDENT) v. SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION No. 233 (INTERVENER) v. SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL UNION No. 30 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ROSCO AT ITS PLANT IN OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, CLERICAL, SALES AND ENGINEERING STAFF AND THOSE PERSONS COVERED BY THE TERMS OF A COLLECTIVE AGREEMENT MADE BETWEEN THE TORONTO SHEET METAL LABOUR BUREAU AND THE SHEET METAL WORKERS INTERNATIONAL LOCAL UNION No. 30."

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	126
NUMBER OF PERSONS WHO CAST BALLOTS	125
NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	120
NUMBER OF BALLOTS MARKED IN FAVOUR OF SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL UNION No. 233	2

11712-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION No. 124 (APPLICANT) v. ROLAND LEFEBVRE LATHING LIMITED (RESPONDENT) v. CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION No. 1, N.C.C.L. (INTERVENER).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH

TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON	
REVISED VOTERS' LIST	3
NUMBER OF PERSONS WHO CAST BALLOTS	3
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF OPERATIVE PLASTERERS AND	
CEMENT MASONS INTERNATIONAL ASSOCIA-	
TION OF THE UNITED STATES AND CANADA	
LOCAL UNION NO. 124	3
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF CANADIAN CONSTRUCTION	
WORKERS' UNION, DIVISION NO. 1,	
N.C.C.L.	0

11589-65-R: SHOPMEN'S LOCAL UNION NO. 743 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFFILIATED WITH THE AFL-CIO, CLC.) (APPLICANT) V. CANADA IRON FOUNDRIES LIMITED, EASTERN STRUCTURAL DIVISION (RESPONDENT) V. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 14869 (INTERVENER).

UNIT: "ALL EMPLOYEES IN THE RESPONDENT'S SHOP AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, WATCHMEN AND EMPLOYEES ENGAGED IN FIELD ERECTION OR CONSTRUCTION WORK." (42 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON	
REVISED VOTERS' LIST	44
NUMBER OF PERSONS WHO CAST BALLOTS	44
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	29
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF INTERVENER	15

APPLICATIONS FOR CERTIFICATION DISMISSED DURING MAY

NO VOTE CONDUCTED

11170-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. BIRD CONSTRUCTION CO. LTD. (RESPONDENT).

11461-65-R: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO-CLC (APPLICANT) V. CRUSH BEVERAGES LIMITED (RESPONDENT). (20 EMPLOYEES).

11566-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1758 (APPLICANT) V. D. C. SNELLING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS) (4 EMPLOYEES).

11579-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) v. THUNDER BAY HARBOUR IMPROVEMENTS LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER) v. THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (INTERVENER).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, PERSONS COVERED BY A CERTIFICATE, DATED MARCH 29TH, 1966, ISSUED BY THIS BOARD TO INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, PERSONS, OTHER THAN IRONWORKERS, COVERED BY THE COLLECTIVE AGREEMENT BETWEEN LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 AND THE GENERAL CONTRACTORS DIVISION OF THE LAKEHEAD BUILDERS EXCHANGE, DATED JUNE 10TH, 1964, AND PERSONS COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 AND THE LAKEHEAD BUILDERS EXCHANGE, DATED JUNE 10TH, 1964."

11594-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. KOHEN BOX CO. (WINDSOR) LIMITED (RESPONDENT) v. LOCAL 802-UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER). (90 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 117).

11606-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) v. SARNIA INSPECTION COMPANY LIMITED (RESPONDENT). (2 EMPLOYEES).

11683-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. BILL BAILEY THE OIL MAN (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON ENGAGED IN OILBURNER SERVICE AND INSTALLATION." (3 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 122).

11705-66-R: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) v. COOPER-WEEKS LIMITED (RESPONDENT). (214 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

11707-66-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. BEEF TERMINAL LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

VOTING CONSTITUENCY: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (3 EMPLOYEES)

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	2
NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	2

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

11282-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. H & O. CENTERLESS GRINDING LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (27 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	24
NUMBER OF PERSONS WHO CAST BALLOTS	24
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	16

11498-65-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. WESTERN FOUNDRY COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINGHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (71 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	58
NUMBER OF PERSONS WHO CAST BALLOTS	56
NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	26
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	29

11534-65-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) v. AIR MASTER OF CANADA LIMITED (RESPONDENT) v. AIR MASTER EMPLOYEES ASSOCIATION (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND SALES STAFF." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	10

11541-65-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220 B.S.E.I.U. - A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. COMBINED ROMAN CATHOLIC SEPARATE SCHOOLS OF ST. THOMAS (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PROFESSIONAL TEACHERS AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3

11549-65-R: PUBLIC SERVICE EMPLOYEES' ASSOCIATION (APPLICANT) V. KINGSTON HOTEL COMPANY LTD. CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF, ROYAL PUBLIC HOUSE (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS ROYAL PUBLIC HOUSE, AT KINGSTON, SAVE AND EXCEPT BEVERAGE ROOM MANAGER, PERSONS ABOVE THE RANK OF BEVERAGE ROOM MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

11559-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, LOCAL 527 (A.F.L.-C.I.O.) (C.L.C.) (APPLICANT) V. TEPPERMAN AND SONS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (25 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10

11568-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, LOCAL 527 - (AFL-CIO) (CLC) (APPLICANT) V. GILLIN ENGINEERING & CONSTRUCTION LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MAY

11465-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. UNITED FORMING LIMITED (RESPONDENT). (33 EMPLOYEES).

11611-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. WESTLAW DEVELOPMENTS (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (12 EMPLOYEES).

11662-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (APPLICANT) V. DONALDSON-BARRON LIMITED (RESPONDENT). (13 EMPLOYEES).

11696-66-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 1059 (APPLICANT) V. HAGGERTY CAMPBELL CONSTRUCTION LIMITED (RESPONDENT). (26 EMPLOYEES).

11706-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. MATTHEWS CONSTRUCTION COMPANY LIMITED (RESPONDENT). (20 EMPLOYEES).

11723-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MILLER PAVING LIMITED (RESPONDENT). (21 EMPLOYEES).

11729-66-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DROPE PAVING & CONSTRUCTION LTD. (RESPONDENT). (12 EMPLOYEES).

11757-66-R: BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA, LOCAL UNION 1630 (SIGN & PICTORIAL) (APPLICANT) V. DAY SIGN COMPANY LTD, (RESPONDENT). (25 EMPLOYEES).

11775-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 (APPLICANT) V. EICHELEY CORPORATION (RESPONDENT). (7 EMPLOYEES).

11786-66-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. C. H. TRUCKING LTD. (RESPONDENT). (6 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING

MAY

11460-65-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION, AFL, CIO, GLC (APPLICANT) V. TWEED VENEERS LIMITED SHOP UNION (RESPONDENT) V. TWEED VENEERS LIMITED (INTERVENER). (GRANTED). (35 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 125).

11610-66-R: BARRIE TANNING, LIMITED (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (GRANTED). (4 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 128).

11626-66-R: JAMES M. D. WATT (APPLICANT) V. UNITED AUTO WORKERS LOCAL No. 641 (RESPONDENT). DISMISSED). (41 EMPLOYEES).

11732-66-R: SILVIO JOHN PIOTTO (APPLICANT) V. GENERAL TRUCK DRIVERS' UNION LOCAL 879 (RESPONDENT). (DISMISSED). (20 EMPLOYEES).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING MAY

11726-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. UNION GAS COMPANY OF CANADA LIMITED (RESPONDENT). (GRANTED).

11756-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED (SUDBURY) (RESPONDENT). (GRANTED).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING MAY

11771-66-U: PIONEER ELECTRIC ONTARIO LIMITED (APPLICANT) V. DAVID ANDREWS ET AL (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MAY

11628-66-U: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. FAMOUS PANT MFG. CO., LIMITED (RESPONDENT). (GRANTED).

11629-66-U: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. ROBERT MANN AND ARMIU SCHÖNBERGER AND ASPASIA KUTSOVOLOS (RESPONDENTS). (GRANTED).

11669-66-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. MR. J. WELSELY BUCKLAND (RESPONDENT). (WITHDRAWN).

11670-66-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT). (WITHDRAWN).

11671-66-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. MR. LEO DAVID (RESPONDENT). (WITHDRAWN).

11672-66-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT). (WITHDRAWN).

11673-66-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. MR. ED GAGNE (RESPONDENT). (WITHDRAWN).

11674-66-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT). (WITHDRAWN).

11675-66-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. MR. ANTHONY O'REILLY (RESPONDENT). (WITHDRAWN).

11676-66-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT). (WITHDRAWN).

11703-66-U: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. BEXON INVESTMENTS LIMITED AND MORRIS A. HUNTER INVESTMENTS LIMITED, BOTH PRIVATE ONTARIO COMPANIES CARRYING ON BUSINESS IN PARTNERSHIP UNDER THE FIRM NAME AND STYLE OF WESTLAW DEVELOPMENTS, AND MORRIS A. HUNTER (RESPONDENTS). (GRANTED).

11710-66-U: DOMINION BRIDGE COMPANY LIMITED, ONTARIO BRANCH (APPLICANT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 AND ALLAN MACISAAC, GEORGE W. ALLEN AND TONY MICHAELS (RESPONDENTS). (WITHDRAWN).

11747-66-U: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION, LOCAL 506 (APPLICANT) V. RETHATI & CO. LIMITED, NICK MARA AND BILL CASELLA (RESPONDENTS). (WITHDRAWN).

11748-66-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1190 (APPLICANT) V. RETHATI & Co. LIMITED, NICK MARA AND BILL CASELLA (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF
DURING MAY

11228-65-U: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (COMPLAINANT) V. CANADIAN CONTROLLERS LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE).

11464-65-U: AMALGAMATED CLOTHING WORKERS OF AMERICA (COMPLAINANT) V. FAMOUS PANT MFG., Co., LTD. (RESPONDENT).

11591-65-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. W. S. BRASS MOTOR BODIES LIMITED (RESPONDENT).

11621-66-U: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. FIRESTONE TIRE & RUBBER COMPANY OF CANADA LIMITED (RESPONDENT).

11640-66-U: THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. SKENE CARTAGE COMPANY (RESPONDENT).

11697-66-U: CHARLES JAMES PHELAN (COMPLAINANT) V. COMPRESSED AIR EQUIPMENT LTD. (RESPONDENT).

11713-66-U: STELLA LAMBERT (COMPLAINANT) V. SENTRY STORES (RESPONDENT).

11743-66-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1190 (COMPLAINANT) V. RETHATI & Co. LIMITED (RESPONDENT).

11744-66-U: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION, LOCAL 506 (COMPLAINANT) V. RETHATI & Co. LIMITED (RESPONDENT).

11745-66-U: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNEMENTAL IRON WORKERS, LOCAL 721 (COMPLAINANT) V. RETHATI & Co. LIMITED (RESPONDENT).

11750-66-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. KING SEAGRAVE LTD. (RESPONDENT).

11755-66-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. KING SEAGRAVE LTD. (RESPONDENT).

11783-66-U: UPHOLSTERERS' INTERNATIONAL UNION OF N.A. (COMPLAINANT) V. STELLAR FURNITURE & UPHOLSTERY Co. LTD. (RESPONDENT).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

11698-66-M: BYRON JACKSON OF CANADA LIMITED, AND THE INTERNATIONAL ASSOCIATION OF MACHINISTS ON BEHALF OF ITS TORONTO LOCAL LODGE NO. 235 (JOINT APPLICANTS). (GRANTED).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING MAY

11528-65-M: LOCAL UNION 633 AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. GREENSPANS KOSHER SAUSAGE COMPANY LIMITED (RESPONDENT).

11620-66-M: UNITED STEEL WORKERS OF AMERICA (APPLICANT) V. ALGOMA STEEL CORPORATION LIMITED (RESPONDENT).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

11295-65-R: THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) V. SKENE CARTAGE COMPANY LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 137).

11569-65-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. UNIVERSITY OF WINDSOR (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

(SEE INDEXED ENDORSEMENT PAGE 137).

11638-66-R: THE HOTEL & RESTAURANT EMPLOYEE'S AND BARTENDERS INTERNATIONAL UNION LOCAL 412 A.F. OF L.,-C.I.O.,-C.L.C. (APPLICANT) V. THE CANADIAN MOTOR HOTEL (SAULT STE-MARIE) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

(SEE INDEXED ENDORSEMENT PAGE 138).

INDEXED ENDORSEMENTS - CERTIFICATION

11256-65-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V. NORTHERN ELECTRIC OFFICE EMPLOYEE ASSOCIATION (INTERVENER #1) V. NORTHERN ELECTRIC EMPLOYEE ASSOCIATION (INTERVENER #2).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: LAURENCE C. ARNOLD, ROSS RUSSELL AND WALTER LUCAS FOR THE APPLICANT, JOHN P. SANDERSON, D. J. NEWTON AND A. C. E. ELLIOTT FOR THE RESPONDENT, T. L. BURNETT, R. F. BARBER AND W. MAWLEY FOR NORTHERN ELECTRIC OFFICE EMPLOYEE ASSOCIATION, RONALD G. NELSON, IAN SCOTT, THOMAS ELLISON AND G. P. MEEHAN FOR NORTHERN ELECTRIC EMPLOYEE ASSOCIATION, JOHN H. OSLER Q.C., E. ARNOLD AND H. FRALEIGH FOR THE LONDON AND DISTRICT LABOUR COUNCIL.

DECISION OF: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN AND BOARD MEMBER
E. BOYER. (MAY 18, 1966)

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE BOARD ON JANUARY 25TH, 1966 DIRECTED THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT AND THAT THE VOTERS BE GIVEN A CHOICE BETWEEN THE APPLICANT AND NORTHERN ELECTRIC EMPLOYEE ASSOCIATION (HEREINAFTER REFERRED TO AS N.E.E.A.)
2. THE VOTING ARRANGEMENTS WERE MADE BY THE PARTIES FOR THE VOTE TO BE TAKEN ON TUESDAY, FEBRUARY 15TH, 1966 AND THE REGISTRAR, PURSUANT TO THE PROVISIONS OF SECTION 42 (J) OF THE BOARD'S RULES OF PROCEDURE, DIRECTED ALL INTERESTED PERSONS TO REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING FROM MIDNIGHT OF FRIDAY, THE 11TH DAY OF FEBRUARY, 1966 UNTIL THE VOTE WAS TAKEN. NOTIFICATION OF THIS RESTRICTION WAS PUBLISHED IN THE RESPONDENT'S PLANT APPROXIMATELY ONE WEEK PRIOR TO THE ONSET OF THE SILENT PERIOD.
3. OF THE 1165 PERSONS WHOSE NAMES APPEARED ON THE REVISED VOTERS' LIST ON THE TAKING OF THE REPRESENTATION VOTE, 513 VOTED IN FAVOUR OF THE APPLICANT.
4. IMMEDIATELY FOLLOWING THE TAKING OF THE REPRESENTATION VOTE THE APPLICANT ALLEGED THAT THE SILENT PERIOD HAD BEEN BREACHED BY THE PUBLICATION OF PROPAGANDA AGAINST THE APPLICANT BY BOTH THE LONDON AND DISTRICT LABOUR COUNCIL (HEREINAFTER REFERRED TO AS THE COUNCIL) AND THE CANADIAN LABOUR CONGRESS, (HEREINAFTER REFERRED TO AS THE C.L.C.).
5. THE COUNCIL IS A CHARTERED SUBORDINATE BODY OF THE C.L.C. WHOSE MEMBERS ARE COMPOSED OF C.L.C. AFFILIATED UNIONS IN THE LONDON AREA.
6. BECAUSE SOME OF THE ALLEGATIONS MADE BY THE APPLICANT WERE DIRECTED AGAINST PERSONS WHO WERE NOT PARTIES TO THE PROCEEDINGS BEFORE THE BOARD, THE BOARD DIRECTED THE REGISTRAR TO SERVE THE COUNCIL AND THE C.L.C. WITH NOTICE OF THESE PROCEEDINGS. AT THE HEARINGS WHICH COMMENCED ON APRIL 21ST, 1966, THE COUNCIL AND THE C.L.C. APPEARED AND WERE REPRESENTED BY LEGAL COUNSEL.
7. IT APPEARS FROM THE EVIDENCE THAT THE APPLICANT'S CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES BEGAN IN THE EARLY PART OF 1965. SUBSEQUENTLY THE C.L.C., WITH THE SUPPORT OF A GREAT MANY OF THE N.E.E.A. OFFICERS AND OFFICIALS, ATTEMPTED TO EFFECT AN AMALGAMATION, MERGER OR TRANSFER OF JURISDICTION (HEREINAFTER REFERRED TO AS THE PROPOSED MERGER) WITH THE NORTHERN ELECTRIC EMPLOYEES ASSOCIATION, C.L.C. LOCAL 1629, WHICH HAD BEEN CHARTERED BY THE C.L.C. ON NOVEMBER 19TH, 1965, FOR THAT PURPOSE. MANY OF THE CHARTER MEMBERS OF THIS LOCAL UNION WERE ALSO OFFICERS AND OFFICIALS OF THE N.E.E.A. A REFERENDUM

VOTE WAS TAKEN ON DECEMBER 8TH, 1965, OF THE EMPLOYEES OF THE RESPONDENT WHO WERE INCLUDED IN THE BARGAINING UNIT REPRESENTED BY N.E.E.A. TO DETERMINE THEIR WISHES WITH RESPECT TO THE PROPOSED MERGER.

8. HOWEVER, PRECEDING THE VOTE ON DECEMBER 8TH, 1965, THE C.L.C. CARRIED ON AN EXTENSIVE CAMPAIGN IN SUPPORT OF THE PROPOSED MERGER AND DISTRIBUTED A LARGE NUMBER OF LEAFLETS TO THE EMPLOYEES AND CONDUCTED MEETINGS OF THE EMPLOYEES. IN ADDITION TO THE OFFICERS AND OFFICIALS OF THE C.L.C. WHO WERE ACTIVE IN THIS CAMPAIGN, SEVERAL OFFICERS AND OFFICIALS OF THE N.E.E.A. OPENLY ASSISTED THE C.L.C. A GREAT DEAL OF PROPAGANDA AT THIS TIME WAS DIRECTED AGAINST THE APPLICANT BY THE C.L.C.

9. ON THE TAKING OF THE REFERENDUM VOTE ON DECEMBER 8TH, 1965, A MAJORITY OF THE EMPLOYEES VOTED AGAINST THE PROPOSED MERGER.

10. ON DECEMBER 13TH, 1965, FOLLOWING THE REJECTION OF THE PROPOSED MERGER A NEW CHARTER WAS ISSUED BY THE C.L.C. WHEREIN THE NAME OF THE LOCAL WHICH WAS CHARTERED ON NOVEMBER 19TH, 1965, WAS CHANGED TO READ "LONDON LOCAL 1629 C.L.C.", AND TWO NEW CHARTER MEMBERS WERE SUBSTITUTED FOR TWO OF THE PERSONS WHO HAD APPEARED AS CHARTER MEMBERS ON THE CHARTER DATED NOVEMBER 19TH, 1965. THE TWO ORIGINAL CHARTER MEMBERS WERE REMOVED APPARENTLY BECAUSE THEY NO LONGER SUPPORTED THE C.L.C., HOWEVER, THE OTHER CHARTER MEMBERS WERE COMMON TO BOTH CHARTERS AND INCLUDED PERSONS WHO HELD OFFICE IN THE N.E.E.A.

11. ON DECEMBER 20TH, 1965, LONDON LOCAL 1629 C.L.C. PUBLISHED A PAMPHLET WHICH WAS DISTRIBUTED TO EMPLOYEES WHEREIN IT WAS ANNOUNCED THAT IT HAD BEEN "DECIDED TO START A C.L.C. CARD SIGNING CAMPAIGN" AND IN WHICH THE APPLICANT IN THIS MATTER WAS ATTACKED. FROM THIS POINT OF TIME LONDON LOCAL 1629 C.L.C. CARRIED ON AN ACTIVE CAMPAIGN IN OPPOSITION TO THE APPLICANT TO WIN THE SUPPORT OF THE EMPLOYEES AND ALL LITERATURE PUBLISHED BY IT WAS PRIMARILY DIRECTED AGAINST THE APPLICANT.

12. THE PRESIDENT OF THE COUNCIL AND OFFICERS OF OTHER C.L.C. LOCAL UNIONS ASSISTED THE C.L.C. OFFICIALS IN DISTRIBUTING PAMPHLETS OR LEAFLETS ON BEHALF OF LONDON LOCAL 1629 C.L.C. IN ITS CAMPAIGN.

13. AFTER THE ONSET OF THE SILENT PERIOD, THE APPLICANT REFRAINED FROM PUBLISHING ANY PROPAGANDA AND THE APPLICANT DID NOT ENGAGED IN ELECTIONEERING. HOWEVER, AN OFFICER OF THE C.L.C. CAUSED A PUBLICATION TO APPEAR IN THE LONDON FREE PRESS ON MONDAY, FEBRUARY 14TH, 1966, DURING THE SILENT PERIOD AND THE DAY PRIOR TO THE REPRESENTATION VOTE BEING TAKEN. THIS PUBLICATION READS AS FOLLOWS:

"IMPORTANT MESSAGE
FOR ALL
NORTHERN ELECTRIC EMPLOYEES
LONDON

C.L.C. LOCAL 1629 OF THE NORTHERN ELECTRIC PLANT,
LONDON, WANTS TO REPUDIATE ONE OF THE MANY ERRONEOUS
STATEMENTS PUBLISHED BY THE U.E. IN THEIR LETTER OF

FEB. 4 TO THE NORTHERN EMPLOYEES, STATING: 'THE C.L.C. CANNOT BE VOTED IN FOR AT LEAST TWO MORE YEARS, THAT IS UNTIL 1968'. THE LABOUR RELATIONS ACT, SECTION 5(2) STATES THAT AN APPLICATION FOR CERTIFICATION CAN BE MADE ONLY AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF A COLLECTIVE AGREEMENT.

THE C.L.C. WANTS TO ASSURE THE EMPLOYEES AT NORTHERN ELECTRIC, AN APPLICATION FOR CERTIFICATION WILL BE MADE WITH THEIR SUPPORT, ANYTIME AFTER THE VOTE AS LONG AS THERE IS NO AGREEMENT.

LOCAL 1596, CANADIAN LABOUR CONGRESS
TREASURE ISLAND PLAZA, LONDON"

THE OFFICIAL WHO CAUSED THE PUBLICATION TO APPEAR TESTIFIED THAT HE COULD NOT EXPLAIN THE REFERENCE TO LOCAL 1596, CANADIAN LABOUR CONGRESS WHICH APPEARED ON THE BOTTOM OF THE PUBLICATION OTHER THAN TO SAY IT WAS IN ERROR AND SHOULD HAVE READ LOCAL 1629. THE BOARD REFRAINS FROM COMMENTING ON THE ACCURACY OF THE INTERPRETATION PLACED ON THE ACT BY LOCAL 1629 IN THE PUBLICATION QUOTED ABOVE.

14. IN ADDITION, LONDON AND DISTRICT LABOUR COUNCIL, PURSUANT TO A RESOLUTION WHICH HAD BEEN PASSED AT THE MEETING OF THE COUNCIL ON WEDNESDAY, FEBRUARY 9TH, 1966, DISTRIBUTED AT THE GATES OF THE RESPONDENT'S PLANT ON MONDAY, FEBRUARY 14TH, 1966, A LEAFLET ON THE LETTERHEAD OF THE COUNCIL WHICH READS IN PART AS FOLLOWS:

"THE LONDON AND DISTRICT LABOUR COUNCIL CHARTERED BY THE CANADIAN LABOUR CONGRESS AND ITS 67 AFFILIATED LOCAL UNIONS IN LONDON, URGES THE EMPLOYEES AT NORTHERN ELECTRIC IN LONDON TO BECOME MEMBERS OF THE CANADIAN LABOUR CONGRESS.

WE INVITE YOU TO PARTICIPATE IN THE AFFAIRS OF ORGANIZED LABOUR IN LONDON BY SIGNING A MEMBERSHIP CARD FOR THE CANADIAN LABOUR CONGRESS. IN SO DOING YOU WILL HAVE THE FULL SUPPORT OF THE EMPLOYEES FROM THE FOLLOWING PLANTS AND COMPANIES WHOSE EMPLOYEES ARE ALREADY MEMBERS OF C.L.C. LOCAL UNION:

(58 PLANTS AND COMPANIES ARE LISTED)

JOIN THE FAMILY OF LABOUR
SIGN A CARD TO-DAY

ISSUED BY: THE LONDON AND DISTRICT LABOUR COUNCIL."

15. ON FEBRUARY 16TH, 1966, THE DAY FOLLOWING THE REPRESENTATION VOTE, A LEAFLET ON THE LETTERHEAD OF THE C.L.C. WAS DISTRIBUTED BY OFFICIALS

OF THE C.L.C. TO THE EMPLOYEES WHICH READS IN PART AS FOLLOWS:

"C.L.C. READY TO HELP

THE RESULT OF YESTERDAY'S VOTE MAKES IT
CLEAR THAT THE EMPLOYEES OF NORTHERN ELECTRIC
DON'T WANT U.E. TO BE THEIR UNION.

THERE IS NO TIME TO WASTE!!!

LOCAL 1629, C. L. C. INVITES EVERY EMPLOYEE -
REGARDLESS OF HIS OR HER LOYALTY FOR ANY OTHER
ORGANIZATION PRIOR TO THE VOTE - TO GIVE THEIR
FULL SUPPORT TO THE C. L. C. NOW.

SIGN A C. L. C. CARD TODAY, AND LET'S GET ON WITH
THE JOB!!! "

16. THE OFFICIAL OF THE C.L.C. WHO CAUSED THE PUBLICATION TO BE
PRINTED IN THE LONDON FREE PRESS AND THE PRESIDENT OF THE COUNCIL BOTH
TESTIFIED AT THE HEARING AND ACKNOWLEDGED THAT THEY WERE AWARE OF THE
IMPOSITION OF THE SILENT PERIOD IN THIS MATTER.

17. IT IS READILY APPARENT FROM ALL THE EVIDENCE THAT THE C.L.C. AND
THE COUNCIL WERE VITALLY INTERESTED IN THE OUTCOME OF THE REPRESENTATION
VOTE. THE C.L.C. ATTEMPTED TO CONTRIBUTE TO THE DEFEAT OF THE APPLICANT SO
THAT ITS CHARTERED LOCAL WOULD HAVE THE OPPORTUNITY TO BECOME BARGAINING
AGENT FOR THE EMPLOYEES OF THE RESPONDENT. THE COUNCIL SUPPORTED THE C.L.C.
IN THIS ENDEAVOUR AND IF THE C.L.C. WAS SUCCESSFUL, THE STRENGTH OF THE
COUNCIL WOULD BE AUGMENTED. IT WOULD BE DIFFICULT TO CONCEIVE OF A PARTY
TO A PROCEEDING EXHIBITING A GREATER INTEREST IN THE OUTCOME OF A REPRESENTATION
VOTE THAT THE ACTIVITIES OF THE C.L.C. AND THE COUNCIL DISCLOSED.

18. THE RESPONDENT ARGUED THAT BECAUSE IT WAS INNOCENT OF ANY
WRONG IN THIS MATTER IT SHOULD NOT BE PUT TO THE INCONVENIENCE AND EXPENSE
OF A NEW REPRESENTATION VOTE. IT WAS ALSO ARGUED BY THE OTHER PARTIES AND
BY THE COUNCIL AND THE C.L.C. THAT STRANGERS TO A PROCEEDING SHOULD NOT BE
ABLE TO UPSET THE OUTCOME OF A REPRESENTATION VOTE WHEN THE PARTIES THEM-
SELVES WERE NOT IN VIOLATION OF THE SILENT PERIOD. IT WAS FURTHER ARGUED
THAT IF THE BOARD DECIDED TO UPSET THE RESULT OF THE REPRESENTATION VOTE
IN THIS MATTER IT COULD LEAD TO SERIOUS ABUSES.

19. WHILE WE ARE COGNIZANT OF THE INCONVENIENCE AND EXPENSE A NEW
REPRESENTATION VOTE WILL ENTAIL, WE ARE OF OPINION THAT SECTION 42 (J) OF
THE BOARD'S RULES OF PROCEDURE MUST TAKE PRECEDENCE OVER THAT CONSIDERATION.

20. SECTION 42 (J) OF THE BOARD'S RULES OF PROCEDURE WHICH PROVIDES
FOR THE FIXING OF THE SILENT PERIOD READS AS FOLLOWS:

42. WHERE THE BOARD DIRECTS THE TAKING OF A
REPRESENTATION VOTE AND REFERS THE MATTER TO THE

REGISTRAR, THE REGISTRAR MAY, SUBJECT TO THE PROVISIONS OF THE REFERENCE,

- (J) DIRECT ALL INTERESTED PERSONS TO REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING DURING THE DAY OR DAYS THE VOTE IS TAKEN AND FOR SEVENTY-TWO HOURS BEFORE THE DAY ON WHICH THE VOTE IS COMMENCED."

21. SECTION 42 (J) IS NOT RESTRICTED TO "PARTIES" BUT IS DIRECTED TO "ALL INTERESTED PERSONS". WHILE IT MAY BE ARGUED THAT THE NOTICE POSTED IN THE PLANT ANNOUNCING THE IMPOSITION OF THE SILENT PERIOD WAS NOT SUFFICIENT NOTICE TO THE C.L.C. AND THE COUNCIL SINCE THEY HAD NO ACCESS TO THE RESPONDENT'S PLANT. SECTION 42 (J) OF THE BOARD'S RULES OF PROCEDURE IS PUBLIC KNOWLEDGE AND THE OFFICIALS OF BOTH THE COUNCIL AND THE C.L.C. MUST BE PRESUMED TO HAVE KNOWLEDGE OF THIS SECTION OF THE BOARD'S RULES, HOWEVER, THE EVIDENCE IN THIS MATTER DISCLOSES THAT THEY WERE IN FACT AWARE OF THE IMPOSITION OF THE SPECIFIED SILENT PERIOD IN THIS CASE.

22. AS STATED ABOVE, NOT ONLY DID THE C.L.C. AND THE COUNCIL OPENLY EXHIBIT AN INTEREST IN THIS MATTER BUT BOTH STOOD TO GAIN BY THE OUTCOME IF THE APPLICANT WAS DEFEATED.

23. WHILE WE ARE NOT DISPOSED TO FIND THAT "INTERESTED PERSONS" AS REFERRED TO IN SECTION 42 (J) HAS REFERENCE TO ALL PERSONS WHO ARE SIMPLY CURIOUS AS TO THE OUTCOME OF A REPRESENTATION VOTE OR PERSONS WHO ARE MERELY IN FAVOUR OF ONE SIDE OR THE OTHER, HOWEVER, THE TERM WOULD BE WITHOUT MEANING IF IT DID NOT INCLUDE A PERSON (EVEN THOUGH NOT A PARTY) WHO STOOD TO GAIN FROM THE OUTCOME OF THE VOTE AND WHO WAS IN A POSITION TO INFLUENCE THE VOTERS BY OFFERING TO BE A SUBSTITUTE BARGAINING AGENT.

24. THE NEWSPAPER PUBLICATION ON FEBRUARY 14TH, 1966, AND THE LEAFLET PUBLISHED THAT DAY MUST, IN THE CIRCUMSTANCES OF THIS CASE BE FOUND TO BE PROPAGANDA AND ELECTIONEERING. THEY WERE NOT INADVERTENTLY PUBLISHED IN A CONTEXT HAVING NO REFERENCE TO THIS VOTE BUT WERE PUBLISHED WITH A VIEW TO AFFECTING THE RESULT OF THE VOTE. WHETHER THEY IN FACT DID AFFECT THE RESULT IS IMPOSSIBLE TO DETERMINE. HOWEVER, SINCE WE FIND THAT THE PUBLISHED DOCUMENTS ARE PROPAGANDA AND ELECTIONEERING PUBLISHED WITH RESPECT TO THIS VOTE BY PERSONS WHO HAD A REAL INTEREST IN THE OUTCOME OF THE VOTE AND SINCE THEY WERE PUBLISHED DURING THE SILENT PERIOD, WE ARE IMPELLED TO FIND THAT THE SPIRIT AND INTENT OF SECTION 42 (J) OF THE BOARD'S RULES AND THE REGISTRAR'S DIRECTION MADE IN ACCORDANCE THEREWITH HAVE BEEN VIOLATED.

25. THE OBJECTIONABLE PROPAGANDA IN THIS MATTER WAS NOT AN ISOLATED OCCURRENCE BUT WAS INTENDED TO AND DID RECEIVE EXTENSIVE DISTRIBUTION. THIS TYPE OF PROPAGANDA IS READILY DISTINGUISHABLE FROM AND WOULD HAVE FAR GREATER IMPACT THAN A SIMPLE STICKER EXPOSED BY A RANK AND FILE EMPLOYEE AS IN THE CIRCUMSTANCES OF THE RHEEM CANADA LIMITED CASE, O.L.R.B. MONTHLY

REPORT, JULY, 1965, P. 284, AND A DIFFERENT RESULT MUST ACCORDINGLY FOLLOW. THE BOARD THEREFORE DIRECTS THAT THE REPRESENTATION VOTE CONDUCTED IN THIS MATTER ON FEBRUARY 15TH, 1966, BE SET ASIDE.

26. THE BOARD THEREFORE DIRECTS THAT THE REGISTRAR CAUSE THE BALLOTS CAST IN THE REPRESENTATION VOTE ON FEBRUARY 15TH, 1966, IN THIS MATTER, TO BE DESTROYED FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

27. A NEW REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY DESCRIBED BY THE BOARD IN ITS DECISION OF JANUARY 25TH, 1966, IN THIS MATTER. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

28. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND NORTHERN ELECTRIC EMPLOYEE ASSOCIATION.

29. THE PARTIES, THE LONDON AND DISTRICT LABOUR COUNCIL AND THE CANADIAN LABOUR CONGRESS ARE SPECIFICALLY CAUTIONED THAT THE BOARD WILL TREAT ANY FURTHER VIOLATIONS OF THE REGISTRAR'S DIRECTION CONCERNING THE 72 HOUR SILENT PERIOD WHICH WILL BE FIXED IMMEDIATELY PRECEDING THE NEW REPRESENTATION VOTE, AS A VERY SERIOUS MATTER.

30. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER H. F. IRWIN: (MAY 18, 1966)

WHILE I CONCUR IN THE DECISION OF THE BOARD, I DO SO ONLY BECAUSE OF THE SPECIAL CIRCUMSTANCES OF THIS CASE. I AM DEEPLY CONCERNED IN RESPECT OF A SITUATION WHERE INTERESTED PERSONS, ALTHOUGH NOT OFFICIALLY INVOLVED AND HAVING NO STATUS IN THE PROCEEDING BEFORE THE BOARD, CAN, BY THEIR OWN INDIVIDUAL ACTIONS IN CONTRAVENING THE DIRECTIONS OF THE REGISTRAR, IMPOSE UPON THE SUCCESSFUL PARTY TO THE PROCEEDING THE NECESSITY OF PARTICIPATING IN A NEW VOTE.

IN THE INSTANT CASE, THE INCUMBENT TRADE UNION, THE NORTHERN ELECTRIC EMPLOYEES ASSOCIATION, IS REQUIRED TO SUFFER BECAUSE OUTSIDERS TO THE VOTE, LOCAL 1629, CANADIAN LABOUR CONGRESS, AND THE LONDON AND DISTRICT LABOUR COUNCIL, KNOWINGLY AND DELIBERATELY CARRIED ON ELECTIONEERING AND PROPAGANDA AGAINST THE APPLICANT UNION, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (J.E.), DURING THE PERIOD FROM MIDNIGHT OF FRIDAY, FEBRUARY 11, 1966, UNTIL THE VOTE WAS TAKEN ON TUESDAY, FEBRUARY 15, 1966 CONTRARY TO THE DIRECTION OF THE REGISTRAR TO ALL INTERESTED PERSONS.

AS OVER FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT DID NOT VOTE FOR THE APPLICANT UNION, THE BOARD WOULD HAVE DISMISSED THE

APPLICATION AND BARRED THE UNSUCCESSFUL APPLICANT, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA FROM MAKING A FURTHER APPLICATION FOR A PERIOD OF SIX MONTHS FROM THE DATE OF THE SAID DISMISSAL IF IT HAD NOT BEEN FOR THE VIOLATION OF THE REGISTRAR'S DIRECTION (SUPRA) BY LOCAL 1629, CANADIAN LABOUR CONGRESS, AND THE LONDON AND DISTRICT LABOUR COUNCIL.

HAVING SUCCESSFULLY DEFENDED ITS BARGAINING RIGHTS IN THE REPRESENTATION VOTE HELD ON FEBRUARY 15TH, 1966, THE NORTHERN ELECTRIC EMPLOYEES ASSOCIATION IS NOW REQUIRED TO DO SO AGAIN IN ANOTHER VOTE SOLEY BECAUSE OF THE VIOLATION OF THE NO PROPAGANDA AND ELECTIONEERING RULE BY LOCAL 1629 AND THE LONDON AND DISTRICT LABOUR COUNCIL. ON THE OTHER HAND, THE UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, HAVING BEEN DEFEATED IN THE LAST VOTE, IS NOW GIVEN ANOTHER OPPORTUNITY TO TRY AND GAIN THE SUPPORT OF OVER FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT. LOCAL 1629, CANADIAN LABOUR CONGRESS, AND THE LONDON AND DISTRICT LABOUR COUNCIL ARE NOT PUNISHED IN ANY WAY AND HAVE OPENLY FLOUTED THE DIRECTION OF THE REGISTRAR WITH COMPLETE IMPUNITY.

THE RESPONDENT, NORTHERN ELECTRIC COMPANY LIMITED, WHICH HAS SCRUPULOUSLY PLAYED A NEUTRAL ROLE THROUGHOUT THE PROCEEDINGS, ALSO SUFFERS BECAUSE OF THE UNSETTLED CONDITIONS EXISTING IN THE PLANT AND THE LOSS OF PRODUCTION RESULTING THEREFROM. MOREOVER, THE UNION RIVALRY AND UNREST AMONGST THE EMPLOYEES WILL NOW BE REKINDLED AND GLOW AFRESH UNTIL THE NEW VOTE IS TAKEN.

A CONCILIATION OFFICER HAS BEEN APPOINTED BY THE MINISTER OF LABOUR TO ASSIST THE RESPONDENT COMPANY AND THE NORTHERN ELECTRIC EMPLOYEES ASSOCIATION TO EFFECT A COLLECTIVE AGREEMENT. CONSEQUENTLY, LOCAL 1629, CANADIAN LABOUR CONGRESS, IS NOW BARRED FOR AT LEAST 12 MONTHS UNDER THE PROVISIONS OF SECTION 46 (2) OF THE LABOUR RELATIONS ACT FROM MAKING AN APPLICATION FOR CERTIFICATION AS BARGAINING AGENT FOR THE EMPLOYEES IN THE BARGAINING UNIT.

11448-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) v. VILLAGE CONTRACTORS (RESPONDENT) v. BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE, J. DILLON, D.W. FORGIE AND M. TOPPAN APPEARING FOR THE APPLICANT; W. FRAM APPEARING FOR THE RESPONDENT; AND A. BENINCASE, R. LOMONACO, B. FOLCO, C. LIBORIO, G. GUARRACE, F. LONGLIN, M. PANNELLA, G. IENTILE, R. PALMINO, A. SACCOMANNO, D. AMADDEO, G. CUCCHIARO, A. ESTEVES, G. MARRELLO AND F. NACCARATO APPEARING ON THEIR OWN BEHALF.

DECISION OF THE BOARD: (MAY 4, 1966)

AT THE CONTINUATION OF HEARING HELD IN THIS MATTER ON APRIL 25, 1966, THE RESPONDENT APPLIED FOR LEAVE TO AMEND ITS REPLY BY ADDING VARIOUS ALLEGATIONS OF IMPROPRIETY OR IRREGULAR CONDUCT (MORE PARTICULARLY DESCRIBED BELOW) ON THE PART OF THE APPLICANT TRADE UNION. BEFORE DEALING WITH THIS MOTION IT IS NECESSARY TO REVIEW BRIEFLY THE COURSE OF PROCEEDINGS IN THIS MATTER.

AN APPLICATION FOR CERTIFICATION FOR RESPONDENT'S CONSTRUCTION LABOURERS IN THE BOARD'S GEOGRAPHICAL AREA No. 8 WAS FILED WITH THE BOARD ON FEBRUARY 24, 1966. THE TERMINAL DATE SET FOR THE APPLICATION BY THE REGISTRAR WAS MARCH 2, 1966. A REPLY BY THE RESPONDENT, STATEMENT OF OBJECTIONS BY EMPLOYEES AND AN INTERVENTION BY BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1, (HEREINAFTER REFERRED TO AS "LOCAL 1") WERE ALL FILED WITH THE BOARD BY THE TERMINAL DATE AS PRESCRIBED BY THE BOARD'S RULES OF PROCEDURE. THE RESPONDENT WAS PERMITTED TO FILE A FURTHER REPLY ON MARCH 8, 1966, TWO DAYS PRIOR TO THE FIRST HEARING.

THE MATTER CAME ON FOR HEARING ON MARCH 10, 1966, AT WHICH TIME LOCAL 1 WAS GRANTED AN ADJOURNMENT IN ORDER TO SECURE THE SERVICES OF A SOLICITOR. THE MATTER CAME ON AGAIN FOR HEARING ON MARCH 15, 1966 DURING THE COURSE OF WHICH THE APPLICANT MOVED FOR LEAVE TO FILE ALLEGATIONS RESPECTING THE STATUS OF LOCAL 1. THE BOARD ADJOURNED THE HEARING TO CONSIDER THE MOTION WHICH WAS SUBSEQUENTLY DENIED ON MARCH 17, 1966. BY LETTER DATED MARCH 18, 1966 THE APPLICANT REQUESTED THE BOARD TO RECONSIDER THAT DECISION. THAT REQUEST WAS DENIED IN THE BOARD'S DECISIONS OF APRIL 4 AND 20, 1966. THE DECISION OF APRIL 4, 1966 REFERS TO THE FACT THAT BY LETTER DATED MARCH 28, 1966 LOCAL 1 ABANDONED ITS INTERVENTION.

IT SHOULD BE NOTED THAT AT THE HEARING ON MARCH 15, 1966, LOCAL 1 SOUGHT LEAVE TO FILE A FORM 64, APPLICATION FOR CERTIFICATION BY INTERVENER, CONSTRUCTION INDUSTRY. AFTER CONSIDERING THE REPRESENTATIONS OF THE PARTIES THE BOARD AT THAT HEARING, AND PURSUANT TO SECTION 77(3) (B) OF THE LABOUR RELATIONS ACT, POSTPONED CONSIDERATION OF THIS SUBSEQUENT APPLICATION UNTIL A FINAL DECISION WAS REACHED IN THE PRESENT APPLICATION. IT MUST FURTHER BE RECORDED THAT BY LETTER RECEIVED BY THE BOARD ON MARCH 31, 1966 THE SOLICITOR FOR THE RESPONDENT INFORMED THE BOARD THAT "THE REMOVAL OF INDEPENDENT LOCAL 1 FROM THE SCENE WILL FORCE US INTO A RE-APPRAISAL OF OUR SITUATION". BY THE SAME LETTER IT WAS REQUESTED THAT THE MATTER BE NOT LISTED FOR HEARING BEFORE THE WEEK OF APRIL 25, 1966 BECAUSE THE SOLICITOR WAS GOING ON HOLIDAYS. THIS BEING A CONSTRUCTION INDUSTRY CASE, IT IS UNLIKELY THAT THE BOARD WOULD HAVE ACCEDDED TO THIS LAST REQUEST WITHOUT THE CONSENT OF ALL PARTIES. HOWEVER, IT WAS UNNECESSARY TO CONSIDER THE REQUEST BECAUSE THE BOARD'S CALENDAR MADE IT IMPOSSIBLE TO LIST THE CASE FOR CONTINUATION OF HEARING PRIOR TO THAT PARTICULAR WEEK. BY NOTICE OF HEARING DATED APRIL 5, 1966 THE PARTIES WERE INFORMED THAT THE NEXT HEARING WOULD BE ON APRIL 25, 1966. IN THE INTERVAL BETWEEN MARCH 31, THE DATE OF THE RESPONDENT'S LETTER REFERRED TO ABOVE, AND APRIL 25, NOTHING WAS FILED WITH THE BOARD BY THE RESPONDENT PERTAINING TO ANY AMENDMENTS TO ITS REPLY.

WE TURN NOW TO CONSIDER THE RESPONDENT'S ORAL REQUEST MADE AT THE COMMENCEMENT OF THE HEARING ON APRIL 25, TO AMEND ITS REPLY AS FOLLOWS:

1. QUESTIONING WHETHER THE APPLICANT WAS A TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT BY REASON OF ITS FAILURE TO HOLD AN ELECTION OF OFFICERS FOR THE PAST YEAR; AND

2. ALLEGING THAT THE APPLICANT HAD COMMITTED A FRAUD ON THE BOARD IN THAT

- (A) IT MADE A FALSE STATEMENT IN PARAGRAPH 8 OF ITS APPLICATION,
- (B) A REPRESENTATIVE OF THE APPLICANT PASSED HIMSELF OFF AS THE REPRESENTATIVE OF ANOTHER TRADE UNION, NAMELY LOCAL 1, DURING THE APPLICANT'S ORGANIZATIONAL CAMPAIGN, AND
- (C) THAT THE PERSONS, OR SOME OF THEM, FOR WHOM THE APPLICANT SUBMITTED EVIDENCE OF MEMBERSHIP WERE NOT MEMBERS OF THE APPLICANT AND HAD NO INTENTION OF JOINING LOCAL 506.

THE RESPONDENT DID NOT FILE A WRITTEN REQUEST AND THE ABOVE FORMULATION CONSTITUTES OUR UNDERSTANDING OF THE RESPONDENT'S PROPOSED AMENDMENTS TO ITS REPLY.

DEALING WITH THE FIRST ALLEGATION, THAT IS, THE STATUS OF THE APPLICANT AS A TRADE UNION, COUNSEL INFORMED US THAT IT WAS UNABLE TO OBTAIN EVIDENCE TO SUPPORT PRIOR SUSPICIONS UNTIL THE WEEK OF APRIL 18, 1966. COUNSEL POINTED OUT THAT IT WAS DIFFICULT FOR AN EMPLOYER TO OBTAIN EVIDENCE RESPECTING AN ALLEGATION OF THE KIND IN QUESTION AND STATED, FURTHER, THAT IT WAS LOATH TO FILE ALLEGATIONS BASED ON MERE SUSPICION ALONE. FURTHERMORE, ALTHOUGH THE APPLICANT FILED A FORM 59, STATEMENT ON STATUS OF TRADE UNION, CONSTRUCTION INDUSTRY, IT IS NOT THE PRACTICE OF THE BOARD TO RELEASE THE CONTENTS OF THIS DOCUMENT UNTIL THE HEARING AND IN THIS CASE FORM 59 WAS NOT SHOWN TO THE PARTIES UNTIL THE HEARING ON APRIL 25. IN ALL THESE CIRCUMSTANCES, THEN, WE HAVE REACHED THE CONCLUSION THAT THE RESPONDENT SHOULD BE PERMITTED TO AMEND ITS REPLY ON THIS GROUND.

WE TURN NOW TO THE ALLEGATIONS OF FRAUD. THE RESPONDENT'S COUNSEL ADMITTED THAT HE WAS COUNTING ON THE INTERVENER, LOCAL 1, TO RAISE THE MATTERS SET OUT IN 2(A), (B) AND (C), SUPRA, AND THAT HE WAS NOW RAISING THEM ONLY BECAUSE LOCAL 1 HAD WITHDRAWN FROM THE CASE. LEAVING ASIDE 2(A) FOR THE TIME BEING, THIS ADMISSION CLEARLY IMPLIES THAT THE RESPONDENT HAD KNOWLEDGE AT A MUCH EARLIER DATE OF THE ALLEGATIONS SET OUT IN 2(B) AND 2(C). FURTHERMORE, IT IMPLIES THAT LOCAL 1 ALSO HAD PRIOR

KNOWLEDGE OF THESE SAME MATTERS. HOWEVER, LOCAL 1 DID NOT RAISE THE MATTERS SET OUT IN 2(b) AND 2(c) IN ANY OF THE DOCUMENTS, INCLUDING FORM 64, WHICH IT FILED WITH THE BOARD NOR DID IT INDICATE AT ANY HEARING HELD BY THE BOARD PRIOR TO ITS WITHDRAWAL THAT IT WOULD SEEK LEAVE TO RAISE SUCH MATTERS. IT IS CLEAR THAT LOCAL 1 HAD IN THE CIRCUMSTANCES OF THIS CASE AMPLE OPPORTUNITY TO MAKE INVESTIGATIONS. THERE IS NO SUGGESTION BEFORE US THAT ITEMS 2(b) AND 2(c) AROSE AS A RESULT OF NEW EVIDENCE WHICH COULD NOT HAVE BEEN DISCOVERED BY REASONABLE DILIGENCE ON THE PART OF LOCAL 1. IN OTHER WORDS, THE POSITION OF LOCAL 1 WAS NO DIFFERENT FROM THAT OF THE APPLICANT AS DESCRIBED BY THE BOARD IN ITS DECISION IN THIS CASE OF APRIL 4 LAST, IN WHICH THE APPLICANT WAS DENIED LEAVE TO FILE ALLEGATIONS RESPECTING THE STATEMENTS OF DESIRE FILED BY EMPLOYEES. CLEARLY, LOCAL 1 WOULD ALSO HAVE BEEN DENIED LEAVE TO FILE ALLEGATIONS AS SET OUT IN 2(b) AND 2(c) HAD IT MADE SUCH A MOTION EITHER AT THE LAST HEARING WHICH IT ATTENDED OR SUBSEQUENT THERETO.

THE RESPONDENT, BASING ITS CASE AS IT DOES ON THE FACT THAT IT WAS COUNTING ON LOCAL 1 TO RAISE THESE MATTERS, CAN BE IN NO BETTER POSITION THAN LOCAL 1. WE HAVE NOT OVERLOOKED THE ARGUMENT OF COUNSEL FOR THE RESPONDENT BASED ON WHAT HE REFERS TO AS THE DICTATES OF NATURAL JUSTICE IN THE LIGHT OF THE IMPORTANCE OF THE CASE TO HIS CLIENT AND TO THE INDUSTRY. IF THIS IS SO, THEN WE CAN ONLY SAY THAT PERHAPS THE RESPONDENT OUGHT NOT TO HAVE LEFT THE CONDUCT OF THE CASE ON THESE MATTERS HE NOW SEEKS TO BRING UP IN THE HANDS OF ANOTHER PARTY. IN THIS CONNECTION WE SHOULD PERHAPS ALSO NOTE THAT DESPITE THE FACT THAT THE RESPONDENT WAS AWARE OF THE WITHDRAWAL OF LOCAL 1 AT LEAST AS EARLY AS MARCH 30, 1966, IT TOOK NO STEPS TO SEEK LEAVE TO AMEND ITS REPLY UNTIL APRIL 25, 1966.

HAVING REGARD, THEN, TO ALL THE ABOVE CONSIDERATIONS, LEAVE IS REFUSED THE RESPONDENT TO AMEND IT REPLY BY ADDING THE ALLEGATIONS SET OUT ABOVE IN 2(b) AND 2(c).

THERE REMAINS FOR CONSIDERATION ITEM 2(a), THAT IS, THE ALLEGATION THAT PARAGRAPH 8 OF THE APPLICATION CONTAINS A FALSE STATEMENT. THIS MATTER WAS NOT RAISED IN ANY DOCUMENT FILED BY LOCAL 1, BUT WAS ADVERTED TO BY COUNSEL FOR THAT UNION DURING THE HEARING ON MARCH 15. IN OTHER WORDS, THE ALLEGATION HAD IN FACT BEEN PUT IN ISSUE AND IT WOULD BE UNDULY TECHNICAL ON OUR PART TO REFUSE TO ALLOW THE RESPONDENT TO PURSUE THE MATTER IN QUESTION. LEAVE IS THEREFORE GRANTED THE RESPONDENT TO AMEND ITS REPLY IN ACCORDANCE WITH THE ALLEGATION SET OUT ABOVE IN ITEM 2(a).

11474-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) v. ZACHARY DE VUONO LIMITED (RESPONDENT) v. BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT HEARING: R. KOSKIE, J. DILLON, R. CARTON, D.W. FORGIE AND M. TOPPAN FOR THE APPLICANT; W. FRAM AND Z. DE VUONO FOR THE RESPONDENT; AND C. ARGIRO, A. BARTELLA, R. CAPOBIANCO, A. COLAROSSO, B. CORRADO, F. KORRAD, S. COVELLO, G. CRISTINI, G. D'ARSIE, G. CESARE AND V. SOTTILE APPEARING ON THEIR OWN BEHALF.

DECISION OF THE BOARD: (MAY 6, 1966)

AT THE CONTINUATION OF HEARING HELD IN THIS MATTER ON APRIL 26, 1966, THE RESPONDENT APPLIED FOR LEAVE TO AMEND ITS REPLY BY ADDING VARIOUS ALLEGATIONS OF IMPROPRIETY OR IRREGULAR CONDUCT (MORE PARTICULARLY DESCRIBED BELOW) ON THE PART OF THE APPLICANT TRADE UNION. BEFORE DEALING WITH THIS MOTION IT IS NECESSARY TO REVIEW BRIEFLY THE COURSE OF PROCEEDINGS IN THIS MATTER.

AN APPLICATION FOR CERTIFICATION FOR RESPONDENT'S CONSTRUCTION LABOURERS IN THE BOARD'S GEOGRAPHICAL AREA No. 8 WAS FILED WITH THE BOARD ON MARCH 2, 1966. THE TERMINAL DATE SET FOR THE APPLICATION BY THE REGISTRAR WAS MARCH 8, 1966. A REPLY BY THE RESPONDENT, STATEMENT OF OBJECTIONS BY EMPLOYEES AND AN INTERVENTION BY BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1 (HEREINAFTER REFERRED TO AS "LOCAL 1") WERE ALL FILED WITH THE BOARD BY THE TERMINAL DATE AS PRESCRIBED BY THE BOARD'S RULES OF PROCEDURE.

THE MATTER CAME ON FOR HEARING ON MARCH 16, 1966. CERTAIN MOTIONS MADE AT THAT HEARING AND LATER DEVELOPMENTS IN THE CASE WERE DEALT WITH IN OUR DECISION DATED APRIL 4, 1966. IN ORDER TO HAVE A COMPLETE PICTURE IT IS NECESSARY TO REPEAT THAT DECISION, WHICH IS AS FOLLOWS:

1. AT THE HEARING IN THIS CASE, HELD ON MARCH 16TH 1966, THE APPLICANT SOUGHT LEAVE TO FILE ALLEGATIONS RESPECTING THE STATUS OF THE INTERVENER, AND FURTHER SOUGHT LEAVE TO FILE ALLEGATIONS THAT THE DOCUMENTARY EVIDENCE FILED IN OPPOSITION TO THE APPLICATION BY EMPLOYEES DID NOT REFLECT THEIR FREE AND VOLUNTARY WISHES. THE MOTION WAS OPPOSED BY COUNSEL FOR THE RESPONDENT AND THE INTERVENER. ALTERNATIVELY, COUNSEL FOR THE INTERVENER ARGUED THAT IF LEAVE WAS GRANTED, THEN THE INTERVENER IN TURN SHOULD BE GRANTED LEAVE TO FILE AN APPLICATION FOR CERTIFICATION AND DOCUMENTARY EVIDENCE IN SUPPORT THEREOF. COUNSEL FOR THE RESPONDENT ALSO ARGUED THAT IF LEAVE WERE GRANTED, THE RESPONDENT SHOULD BE PERMITTED TO FILE A NEW REPLY.

2. IN ITS DECISION OF MARCH 17TH, 1966, THE BOARD RESERVED JUDGMENT ON THESE VARIOUS MOTIONS AND IN ADDITION POSTPONED FURTHER HEARINGS IN THE CASE UNTIL A DECISION WAS REACHED IN VILLAGE CONTRACTORS, BOARD FILE NO. 11448-65-R. BY LETTER, DATED MARCH 23RD, 1966, THE APPLICANT REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF MARCH 17TH, 1966. BY LETTER DATED

MARCH 28TH, 1966, COUNSEL FOR THE INTERVENER INFORMED THE BOARD THAT THE INTERVENER WAS ABANDONING ITS INTERVENTION AND FURTHER THAT THE INTERVENER WAS NO LONGER REPRESENTING EMPLOYEES WHO FILED STATEMENTS OF DESIRE. IN VIEW OF THIS DEVELOPMENT THERE IS NO LONGER ANY NEED FOR THE BOARD TO CONSIDER THE MOTION BY THE APPLICANT FOR LEAVE TO FILE ALLEGATIONS RESPECTING THE STATUS OF THE INTERVENER AND, OF COURSE, THERE IS NO LONGER ANY NEED FOR THE BOARD TO CONSIDER THE REQUEST FOR RECONSIDERATION IN AS FAR AS IT APPLIES TO THE STATUS OF THE INTERVENER.

3. THE INTERVENER IN THIS CASE ALSO INTERVENED IN THE AFOREMENTIONED VILLAGE CONTRACTORS CASE AND IT HAS INFORMED THE BOARD IN THAT CASE THAT IT IS ALSO ABANDONING ITS INTERVENTION THERE. IN THESE CIRCUMSTANCES THERE IS NO LONGER ANY REASON FOR THE BOARD TO POSTPONE FURTHER HEARINGS IN THIS CASE.

4. WE ARE LEFT THEREFORE WITH THE MOTION BY THE APPLICANT FOR LEAVE TO FILE ALLEGATIONS RESPECTING THE VOLUNTARY NATURE OF THE STATEMENTS OF DESIRE FILED BY EMPLOYEES. THE ARGUMENTS OF BOTH COUNSEL FOR THE RESPONDENT AND COUNSEL FOR THE INTERVENER DEALT WITH THE MOTION AS IT AFFECTED THE ALLEGATIONS WITH RESPECT TO THE STATUS OF THE INTERVENER. IN BRIEF, THE ARGUMENT WAS THAT A REPRESENTATIVE OF THE APPLICANT MUST HAVE BEEN FULLY AWARE OF THE ALLEGATIONS WITH RESPECT TO THE STATUS OF THE INTERVENER EVEN PRIOR TO THE FILING OF THE APPLICATION. EVEN IF THIS IS TRUE, THIS ARGUMENT WOULD NOT APPLY IN THE CASE OF THE STATEMENTS OF OBJECTION FILED BY THE EMPLOYEES.

5. IN ALL THE CIRCUMSTANCES OF THIS CASE WE ARE SATISFIED THAT THE APPLICANT'S MOTION FOR LEAVE TO FILE ALLEGATIONS RESPECTING THE VOLUNTARY NATURE OF THE STATEMENTS OF OBJECTION FILED BY EMPLOYEES SHOULD BE AND IT IS HEREBY GRANTED. IN VIEW OF THE POSITION TAKEN BY THE INTERVENER IN ITS LETTER OF MARCH 28TH, 1966, AND HAVING REGARD TO THE CONTENTS OF THE RESPONDENT'S REPLY, AND, FURTHER, HAVING REGARD TO THE FACT THAT THE RESPONDENT HAS INFORMED THE BOARD THAT IT IS NOW NECESSARY FOR IT TO "REAPPRAISE ITS SITUATION", THE BOARD MAKES NO RULING AT THIS TIME WITH RESPECT TO THE RESPONDENT'S MOTION FOR LEAVE TO FILE A FURTHER REPLY.

FOLLOWING THAT DECISION, THE APPLICANT, BY LETTER DATED APRIL 18, 1966, NOTIFIED THE BOARD AND THE RESPONDENT THAT IT INTENDED TO ADDUCE EVIDENCE IN RESPECT OF CERTAIN ADDITIONAL ALLEGATIONS OF IMPROPER CONDUCT RESPECTING EVENTS WHICH TOOK PLACE AT OR ABOUT THE TIME OF THE WITHDRAWAL BY THE INTERVENER OF ITS INTERVENTION. BY LETTER DATED APRIL 20, 1966, THE BOARD NOTIFIED THE PARTIES THAT IT WOULD PERMIT THE APPLICANT TO ADDUCE THE EVIDENCE IN QUESTION SUBJECT TO REPRESENTATIONS BY THE RESPONDENT AT THE HEARING SCHEDULED FOR APRIL 26. AT THE HEARING THE RESPONDENT ADMITTED THE FACTS ALLEGED THOUGH NOT, OF COURSE, THE INFERENCES WHICH THE APPLICANT IN ITS LETTER OF APRIL 18 SOUGHT TO DRAW FROM THE FACTS SET OUT THEREIN.

FOLLOWING ITS LETTER OF MARCH 28, 1966, IN WHICH THE RESPONDENT INFORMED THE BOARD THAT IT WAS NECESSARY TO "RE-APPRAISE ITS SITUATION", NOTHING FURTHER WAS HEARD FROM THE RESPONDENT WITH RESPECT THERETO UNTIL THE MOTION WE ARE NOW CONSIDERING WAS MADE AT THE HEARING ON APRIL 26, 1966.

WE TURN NOW TO CONSIDER THE RESPONDENT'S ORAL REQUEST MADE AT THE COMMENCEMENT OF THE HEARING ON APRIL 26, TO AMEND ITS REPLY AS FOLLOWS:

1. QUESTING WHETHER THE APPLICANT WAS A TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT BY REASON OF ITS FAILURE TO HOLD AN ELECTION OF OFFICERS FOR THE PAST YEAR; AND

2. ALLEGING THAT THE APPLICANT HAD COMMITTED A FRAUD ON THE BOARD IN THAT

(A) IT MADE A FALSE STATEMENT IN PARAGRAPH 8 OF ITS APPLICATION,

(B) A REPRESENTATIVE OF THE APPLICANT PASSED HIMSELF OFF AS THE REPRESENTATIVE OF ANOTHER TRADE UNION, NAMELY LOCAL 1, DURING THE APPLICANT'S ORGANIZATIONAL CAMPAIGN, AND

(C) THAT THE PERSONS, OR SOME OF THEM, FOR WHOM THE APPLICANT SUBMITTED EVIDENCE OF MEMBERSHIP WERE NOT MEMBERS OF THE APPLICANT AND HAD NO INTENTION OF JOINING LOCAL 506.

THE RESPONDENT DID NOT FILE A WRITTEN REQUEST AND THE ABOVE FORMULATION CONSTITUTES OUR UNDERSTANDING OF THE RESPONDENT'S PROPOSED AMENDMENTS TO ITS REPLY.

THIS MOTION IS IN THE SAME TERMS AS ONE MADE IN ANOTHER CASE HEARD BY THIS PANEL, NAMELY, VILLAGE CONTRACTORS, BOARD FILE NO. 11448-65-R. THE SAME COUNSEL APPEARED IN BOTH CASES, WHICH ARE IN FACT SUBSTANTIALLY SIMILAR IN MANY RESPECTS. THUS, WITH RESPECT TO ITEMS 1 AND 2(A) OF THE MOTION, THE RESPONDENT IN THIS CASE IS IN EXACTLY THE SAME POSITION AS THE RESPONDENT IN THE VILLAGE CONTRACTORS CASE. THE SAME IS TRUE WITH RESPECT TO ITEMS 2(B) AND 2(C). THUS, THE RESPONDENT WAS RELYING ON LOCAL 1 (THE SAME INTERVENER AS IN THE VILLAGE CONTRACTORS CASE) TO RAISE THE MATTERS REFERRED TO IN ITEMS 2(B) AND 2(C). AS IN THAT CASE, LOCAL 1 DID NOT IN ANY DOCUMENTS FILED WITH THE BOARD OR AT THE HEARING ON MARCH 16TH OR AT ANY TIME SUBSEQUENT THERETO INDICATE IN ANY WAY THAT IT INTENDED TO RAISE THESE MATTERS. AGAIN, IT IS CLEAR THAT LOCAL 1 HAD IN THE CIRCUMSTANCES OF THIS CASE AMPLE OPPORTUNITY TO MAKE INVESTIGATIONS AND THERE IS NO SUGGESTION BEFORE US THAT ITEMS 2(B) AND 2(C) AROSE AS A RESULT OF NEW EVIDENCE WHICH COULD NOT HAVE BEEN DISCOVERED BY REASONABLE DILIGENCE ON THE PART OF LOCAL 1. AFTER DUE CONSIDERATION, THEREFORE, WE ARE SATISFIED THAT OUR REASONS AND DECISION IN THE VILLAGE CONTRACTORS

CASE ARE APPLICABLE IN THIS CASE AND, ACCORDINGLY, LEAVE IS GRANTED TO THE RESPONDENT TO AMEND ITS REPLY WITH RESPECT TO ITEMS 1 AND 2(A), BUT LEAVE IS REFUSED IN SO FAR AS ITEMS 2(B) AND 2(C) ARE CONCERNED.

11515-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. FEDERAL BOLT & NUT CORPORATION LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C. AND O. URBANOVICS APPEARING FOR THE APPLICANT, WILLIAM S. COOK, FRANK A. REID AND I. GOLDHART APPEARING FOR THE RESPONDENT, MARVIN G. HARRISON APPEARING FOR THE OBJECTORS.

DECISION OF THE BOARD: (MAY 20, 1966)

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2. THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT ON MARCH 10TH, 1966 AND FILED A TOTAL OF 62 MEMBERSHIP DOCUMENTS IN SUPPORT OF ITS APPLICATION.
3. THE RESPONDENT FILED LISTS CONTAINING THE NAMES OF 81 PERSONS WHO WOULD BE IN THE BARGAINING UNIT CLAIMED BY THE APPLICANT ON THE DATE THIS APPLICATION WAS MADE.
4. THE OBJECTORS FILED A PETITION IN OPPOSITION TO THIS APPLICATION CONTAINING THE NAMES OF 16 PERSONS CLAIMED BY THE APPLICANT AS MEMBERS.
5. THE RESPONDENT ALLEGED THAT TWO PERSONS ON WHOSE BEHALF THE APPLICANT HAD SUBMITTED MEMBERSHIP DOCUMENTS HAD NOT SIGNED SUCH MEMBERSHIP DOCUMENTS AND THE BOARD, FOLLOWING ITS PRELIMINARY INQUIRY INTO THE ALLEGATIONS, DIRECTED THE REGISTRAR TO LIST THIS MATTER FOR CONTINUATION OF HEARING TO INQUIRE INTO THE CIRCUMSTANCES UNDER WHICH THE MEMBERSHIP CARDS IN QUESTION WERE SIGNED.
6. IT APPEARS FROM THE EVIDENCE THAT CARDS SUBMITTED BY THE APPLICANT FOR WILLIAM POLLOCK AND JAMES S. POLLOCK, JR. WERE NOT SIGNED BY THEM BUT WERE IN FACT SIGNED BY JAMES S. POLLOCK, SR., THEIR FATHER, WHO WAS ALSO AN EMPLOYEE OF THE RESPONDENT.
7. THE PERSON WHO SIGNED THE CARDS IN QUESTION AS COLLECTOR WAS R. J. PLAUS WHO IS THE VICE-PRESIDENT OF ONE OF THE APPLICANT'S LOCAL UNIONS AND IS EMPLOYED BY ANOTHER MANUFACTURING COMPANY. MR. PLAUS IS NOT A PAID OFFICIAL OF THE APPLICANT BUT IS AN UNPAID VOLUNTARY ORGANIZER OF THE APPLICANT. AS A VOLUNTARY ORGANIZER, MR. PLAUS HAS ASSISTED THE APPLICANT ON SEVEN OR EIGHT OTHER ORGANIZING CAMPAIGNS AND IN THIS PARTICULAR CAMPAIGN ACTED AS COLLECTOR WITH RESPECT TO APPROXIMATELY 31 MEMBERSHIP CARDS SUBMITTED BY THE APPLICANT.

8. IT IS OF INTEREST TO NOTE THAT THE POLLOCK FAMILY IS COMPRISED OF MOTHER, FATHER AND SEVEN CHILDREN WHO LIVE TOGETHER IN A SINGLE FAMILY DWELLING. THE POLLOCK FAMILY ARRIVED IN CANADA FROM SCOTLAND IN DECEMBER, 1965. THE FATHER AND THREE SONS ARE ALL EMPLOYED BY THE RESPONDENT COMPANY. THE SONS WHO ARE EMPLOYED BY THE RESPONDENT TURN OVER ONE-HALF THEIR SALARY TO THEIR MOTHER FOR THE UP-KEEP OF THE FAMILY HOME. THE TWO SONS WITH WHOM WE ARE HERE CONCERNED ARE 18 AND 20 YEARS OF AGE RESPECTIVELY AND ARE BOTH SUBJECT TO AND RESPECT PARENTAL AUTHORITY.

9. WHEN MR. PLAUS FIRST ATTENDED AT THE POLLOCK RESIDENCE IN HIS EFFORT TO SIGN MEMBERS IN THE APPLICANT UNION, THE FATHER AND THE SONS WERE ABSENT AND HE MET MRS. POLLOCK. HER INITIAL REACTION TO HIM AS A UNION REPRESENTATIVE WAS UNFAVOURABLE BECAUSE OF CERTAIN UNSATISFACTORY EXPERIENCES WITH UNIONS IN HER NATIVE SCOTLAND. HOWEVER, MR. PLAUS SUCCEEDED IN OBTAINING FROM MRS. POLLOCK THE ADDRESS OF THE NEW RESIDENCE TO WHICH THE POLLOCK FAMILY WAS ABOUT TO MOVE. WHEN MR. PLAUS ATTENDED AT THE NEW RESIDENCE ON MARCH 2ND, 1966 HE INTERVIEWED MR. POLLOCK SR. AND THIRD SON ROBERT POLLOCK WHO WAS ALSO AN EMPLOYEE. MR. POLLOCK AND HIS SON ROBERT BECAME MEMBERS OF THE APPLICANT UNION AT THAT TIME. SINCE JAMES S. POLLOCK JR. AND WILLIAM POLLOCK WERE NOT AT HOME ON MARCH 2ND WHEN MR. PLAUS WAS PRESENT, MR. PLAUS LEFT TWO MEMBERSHIP CARDS WITH THEIR FATHER AND REQUESTED THE FATHER TO ASK HIS SONS WHETHER OR NOT THEY WERE INTERESTED IN JOINING THE APPLICANT UNION. MR. PLAUS RE-ATTENDED AT THE POLLOCK HOME ABOUT ONE WEEK LATER AND WAS INFORMED BY MRS. POLLOCK AT THAT TIME THAT THE TWO BOYS WERE AGAIN NOT AT HOME. MRS. POLLOCK APPARENTLY ADVISED MR. PLAUS THAT WHILE HER TWO SONS HAD NOT AS YET SIGNED THEIR MEMBERSHIP CARDS SHE WOULD ASK IF THEY WISHED TO SIGN ON THEIR RETURN HOME THAT EVENING. WHEN MR. PLAUS RE-ATTENDED AT THE POLLOCK RESIDENCE THE FOLLOWING DAY MRS. POLLOCK HANDED HIM THE TWO CARDS WHICH WERE SIGNED "JAMES S. POLLOCK" AND "WILLIAM POLLOCK" TOGETHER WITH THE SUM OF \$2.00. MR. PLAUS SIGNED THE CARDS AS COLLECTOR AND GAVE MRS. POLLOCK RECEIPTS FOR \$1.00 FOR JAMES S. POLLOCK AND WILLIAM POLLOCK.

10. MR. PLAUS TURNED THE TWO CARDS OVER TO MR. URBANOVICS, A PAID OFFICIAL OF THE APPLICANT IN CHARGE OF ORGANIZATION IN METROPOLITAN TORONTO. MR. PLAUS DID NOT ADVISE MR. URBANOVICS THAT HE HAD NOT IN FACT WITNESSED THE SIGNATURES ON THE CARDS AND DID NOT RECEIVE THE \$1.00 INITIATION FEES DIRECTLY FROM THE TWO SONS. MR. PLAUS TESTIFIED THAT BECAUSE OF THE FAMILY RELATIONSHIP AND THE FACT THAT HE HAD BEEN PROMISED BY MRS. POLLOCK THAT SHE WOULD ASK HER SONS IF THEY WISHED TO SIGN THE CARDS THE PREVIOUS DAY, IT NEVER OCCURRED TO HIM TO QUESTION MRS. POLLOCK CONCERNING THE MANNER IN WHICH THE CARDS CAME TO BE SIGNED OR WHETHER SHE HAD IN FACT RECEIVED THE \$1.00 PAYMENT DIRECTLY FROM THE SONS. MR. PLAUS TESTIFIED THAT HE ASSUMED THAT THE SONS HAD SIGNED AND PAID THE MONEY AT THEIR MOTHER'S REQUEST.

11. MR. POLLOCK, SR. TESTIFIED THAT HE SIGNED THE CARDS FOR HIS TWO SONS BECAUSE HE FELT THAT HE WAS ENTITLED TO DO SO SINCE HE HAD BEEN INFORMED BY THE IMMIGRATION DEPARTMENT ON HIS ENTRY INTO CANADA, THAT HE WAS RESPONSIBLE FOR HIS CHILDREN UNTIL THEY REACHED THE AGE OF 21 YEARS.

12. THE SONS TESTIFIED THAT THEY HAD AUTHORIZED THEIR FATHER'S ACT, AFTER THE EVENT, WHEN HE ADVISED THEM THAT HE HAD SIGNED A CARD FOR THEM. MR. POLLOCK TESTIFIED THAT BOTH SONS HAD REPAID THE \$1.00, HOWEVER, WHILE JAMES S. POLLOCK, JR. ACKNOWLEDGED THE REPAYMENT OF THE \$1.00 WILLIAM POLLOCK TESTIFIED THAT HE DOES NOT RECALL PAYING THE MONEY.

13. THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 9) FILED IN THIS MATTER DOES NOT DISCLOSE ANY IRREGULARITY WITH RESPECT TO ANY OF THE CARDS SUBMITTED BY THE APPLICANT. FORM 9 WAS SIGNED BY D. M. STOREY, THE LEGISLATIVE DIRECTOR OF THE APPLICANT, WHO TESTIFIED AT THE HEARING THAT HE COMPLETED THE DECLARATION ON THE BASIS OF INQUIRIES MADE OF MR. URBANOVICS. MR. URBANOVICS TESTIFIED THAT HE HAD ALSO MADE THE NECESSARY INQUIRIES OF ALL THE COLLECTORS.

14. THERE CAN BE NO DOUBT THAT THE MEMBERSHIP CARDS SUBMITTED ON BEHALF OF WILLIAM POLLOCK AND JAMES S. POLLOCK, JR. HAVE NO VALUE AND MUST BE DISCOUNTED SINCE THEY ARE NOT SIGNED BY THEM. THE BOARD'S REQUIREMENTS WITH RESPECT TO MEMBERSHIP EVIDENCE IN A TRADE UNION ARE THAT THE EVIDENCE BE A WRITTEN SIGNIFICATION BY A PERSON THAT HE IS A MEMBER OF THE TRADE UNION PLUS WRITTEN EVIDENCE OF THE ACKNOWLEDGMENT BY THE MEMBER OF A FINANCIAL SACRIFICE USUALLY IN THE AMOUNT OF AT LEAST \$1.00, TOGETHER WITH A RECEIPT THEREFOR FROM THE UNION AND ALL SUCH DOCUMENTS MUST BE FILED WITH THE BOARD ON OR BEFORE THE TERMINAL DATE OF THE APPLICATION. IN THIS CASE NEITHER JAMES S. POLLOCK, JR. NOR WILLIAM POLLOCK SIGNIFIED IN WRITING THAT THEY WERE MEMBERS OF THE APPLICANT AND THERE IS NO WRITTEN ACKNOWLEDGMENT BY THEM OF ANY FINANCIAL SACRIFICE.

15. THERE REMAINS THE QUESTION AS TO WHETHER THE SUBMISSION OF THESE TWO DEFECTIVE MEMBERSHIP DOCUMENTS, IN THE MANNER IN WHICH THEY WERE SUBMITTED IN THIS CASE, WILL BE FATAL TO THE APPLICATION.

16. THE APPLICANT ARGUED THAT MR. PLAUS, IN ACCEPTING THE CARDS AND THE MONEY FROM MRS. POLLOCK IN THE CIRCUMSTANCES SET OUT ABOVE WAS ACTING IN THE SAME MANNER AS ANY REASONABLY PRUDENT PERSON WOULD HAVE ACTED IN THE CONDUCT OF HIS OWN AFFAIRS, AND THE BOARD SHOULD THEREFORE NOT IMPOSE A HIGHER STANDARD ON AN APPLICANT TRADE UNION THAN THE STANDARD USED BY A REASONABLE MAN IN THE CONDUCT OF HIS PERSONAL AFFAIRS.

17. WE FIND THAT WHILE MR. PLAUS MAY HAVE BEEN CARELESS WITH RESPECT TO THE TWO CARDS, HE DID NOT SET OUT TO COMMIT A FRAUD ON THE BOARD. HAVING REGARD TO ALL THE EVIDENCE, HIS CARELESSNESS APPEARS TO BE ISOLATED TO THIS ONE TRANSACTION. MR. PLAUS WAS APPARENTLY LULLED, BY THE FAMILY RELATIONSHIP BETWEEN MRS. POLLOCK AND HER TWO SONS AND BY HIS PRIOR CONTACTS WITH HER AND THE OTHER MEMBERS OF THE FAMILY, INTO ACCEPTING THE CARDS WITHOUT QUESTION. THIS RELATIONSHIP CAUSED HIM TO LOOK UPON THE TRANSACTION AS NORMAL REQUIRING NO EXPLANATION. ALTHOUGH MR. PLAUS SUCCEEDED IN MISLEADING HIMSELF HE IS NOT GUILTY OF DELIBERATELY ATTEMPTING TO MISLEAD THE BOARD.

18. IT MAY BE ASSUMED THAT A REASONABLY PRUDENT PERSON IN THE CONDUCT OF HIS OWN AFFAIRS WOULD NOT LIKELY CROSS-EXAMINE THE BOYS' MOTHER WITH RESPECT TO THEIR PURPORTED SIGNATURES, BUT WOULD BE PRONE TO ACCEPT THE SIGNATURES AND THE MONEY PAYMENT AT THEIR FACE VALUE WITHOUT QUESTION IN THESE CIRCUMSTANCES.

19. THE FACTS OF THIS CASE DO NOT LEAD US TO THE CONCLUSION THAT THE APPLICANT WAS "SO LAX IN REGARD TO THE WAY IN WHICH DOCUMENTARY EVIDENCE OF MEMBERSHIP WAS OBTAINED THAT THEY MAY REASONABLY BE TAKEN TO HAVE SHUT THEIR EYES TO THE FACTS" AS STATED IN THE R.C.A. VICTOR COMPANY LIMITED CASE C.C.H. CANADIAN LABOUR LAW REPORTER ¶17,067, C.L.S. 76-4112.

20. MR. PLAUS SHOULD HAVE ADVISED MR. URBANOVICS OF ALL THE CIRCUMSTANCES IN CONNECTION WITH THE TWO CARDS IN QUESTION SO THAT THE APPLICANT COULD HAVE MADE FULL DISCLOSURE IN FORM 9 CONCERNING THE MANNER IN WHICH THE TWO CARDS CAME TO THE APPLICANT. A MITIGATING FEATURE IS THAT MR. PLAUS DID NOT VIEW THE TRANSACTION AS UNUSUAL. BECAUSE OF THE FAMILY RELATIONSHIP HE TREATED THE CARDS AND THE MONEY PAYMENT AS HAVING BEEN RECEIVED DIRECTLY FROM THE SONS RATHER THAN THEIR MOTHER AND ACCORDINGLY IT HAD NOT OCCURRED TO HIM TO DISCLOSE THE DETAILS CONCERNING THE CARDS TO MR. URBANOVICS AT THE TIME THE INQUIRIES WERE MADE OF HIM BY MR. URBANOVICS. HAD FULL DISCLOSURE BEEN MADE IN THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 9), ALL THE APPLICANT WOULD HAVE SUFFERED WOULD BE THE LOSS OF THE TWO CARDS IN QUESTION. HOWEVER, IT MUST BE RECOGNIZED THAT THE FAILURE TO DISCLOSE ONLY RELATES TO THE TWO CARDS IN QUESTION.

21. WHILE MR. PLAUS IS NOT A PAID OFFICIAL OF THE APPLICANT AND ACCORDINGLY IS NOT BOUND BY THE SAME DEGREE OF CARE AS EXPECTED OF SUCH OFFICIALS, IT MUST BE RECOGNIZED THAT HE WAS, BECAUSE OF HIS OFFICE AS VICE-PRESIDENT OF ONE OF THE APPLICANT'S LOCAL UNIONS AND HIS EXPERIENCE AS A VOLUNTARY ORGANIZER IN A DIFFERENT POSITION THAN AN INEXPERIENCED RANK AND FILE EMPLOYEE WHO MIGHT ASSIST THE UNION IN ITS ORGANIZING CAMPAIGN IN ORDER TO OBTAIN UNION REPRESENTATION. HOWEVER, BECAUSE OF THE INQUIRIES WHICH WERE MADE IN THIS MATTER CONCERNING THE COLLECTORS, THIS CASE IS READILY DISTINGUISHABLE FROM THE FACTS SET OUT IN THE BOARD'S DECISION DATED JANUARY 26TH, 1966 IN THE NATIONAL STEEL CAR CORPORATION LIMITED CASE BOARD FILE NO. 10905-65-R WHEREIN THE BOARD FOUND THAT THE DOCUMENTARY EVIDENCE OF MEMBERSHIP WAS NOT SUPPORTED BY A RELIABLE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS BECAUSE OF THE FAILURE OF THE APPLICANT'S PAID OFFICIALS TO MAKE THE NECESSARY INQUIRIES.

22. HAVING REGARD TO ALL THE EVIDENCE AND ESPECIALLY THE FACT THAT THERE WAS NO DELIBERATE ATTEMPT TO MISLEAD THE BOARD, THE ISOLATED NATURE OF THE OBJECTIONABLE TRANSACTION, THE PECULIAR AND SPECIAL CIRCUMSTANCES WHICH SURROUNDED THE SUBMISSION OF THE TWO CARDS IN QUESTION BY THE APPLICANT, THE BOARD IS OF OPINION THAT THE ABSENCE OF FULL DISCLOSURE IN FORM 9 ONLY RELATES TO THE TWO CARDS IN QUESTION AND ANY DEFICIENCY IN FORM 9 MUST ACCORDINGLY BE RESTRICTED TO THOSE TWO CARDS.

23. THE BOARD IS ALSO OF OPINION THAT THE FACTS OF THIS CASE ARE SUCH THAT WHILE THE TWO CARDS IN QUESTION MUST BE DISCOUNTED THERE IS NOTHING BEFORE THE BOARD TO CAST ANY DOUBT ON THE REST OF THE MEMBERSHIP EVIDENCE FILED OR ON THE VALIDITY OF FORM 9 WITH RESPECT TO THE BALANCE OF SUCH MEMBERSHIP EVIDENCE.

24. SINCE THE APPLICANT'S MEMBERSHIP EVIDENCE HAS BEEN REDUCED TO 60 MEMBERSHIP CARDS, THE BOARD IS NOW SATISFIED THAT THE DOCUMENT FILED IN OPPOSITION TO THIS APPLICATION IS SIGNED BY 16 PERSONS WHO ARE CLAIMED BY THE APPLICANT AS MEMBERS. ACCORDINGLY, THE APPLICANT DOES NOT HAVE UNCHALLENGED MEMBERSHIP EVIDENCE FOR MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT. THE BOARD THEREFORE MUST INQUIRE INTO THE CIRCUMSTANCES SURROUNDING THE ORIGINATION AND CIRCULATION OF THE DOCUMENT FILED IN OPPOSITION TO THIS APPLICATION.

25. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING ON ALL OUTSTANDING ISSUES.

11526-65-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. HANFORD LUMBER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDERMOTT.

DECISION OF THE BOARD: (MAY 5, 1966)

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2. THIS IS AN APPLICATION FOR CERTIFICATION.

3. A GROUP OF EMPLOYEES FILED A STATEMENT OF DESIRE OR PETITION, EXPRESSING OPPOSITION TO THE APPLICATION. THIS DOCUMENT WAS FILED WITHIN THE TIME LIMITS PRESCRIBED BY THE BOARD'S RULES. THE SIGNATORIES TO THE DOCUMENT, HOWEVER, FAILED TO APPEAR AT THE HEARING AND WERE NOT REPRESENTED BY COUNSEL. THE MATTER WAS PROCEEDED WITH IN THEIR ABSENCE, AS IS THE CUSTOM OF THE BOARD IN CONFORMITY WITH THE PROVISIONS OF SECTION 11 OF THE RULES OF PROCEDURE RELATING TO STATEMENTS OF DESIRE.

4. WITHIN AN HOUR OF THE CONCLUSION OF THE HEARING, THE FOLLOWING TELEGRAM WAS RECEIVED BY THE BOARD:-

RE HANFORD LUMBER OBJECTION TO CERTIFICATION - WAS NOT AWARE PRESENCE REQUIRED IN SUPPORT OF OBJECTION FILED. RESPECTFULLY REQUEST ON BEHALF OF FELLOW EMPLOYEES OPPORTUNITY TO APPEAR AND PRESENT OBJECTION TO BOARD.

ERCHIL STEWART.

5. ON THE FOLLOWING DAY, THAT IS MARCH 30TH, THE FOLLOWING LETTER WAS DELIVERED TO THE BOARD:-

ON THE AFTERNOON OF 21ST MARCH, A FELLOW EMPLOYEE AT HANFORD LUMBER AND I PRESENTED OUR OBJECTIONS TO CERTIFICATION TO A LADY AT THE BOARD OFFICE AT 8 YORK STREET. ACKNOWLEDGEMENT OF THIS OBJECTION ON BEHALF OF MANY OF MY FELLOW WORKERS WAS MAILED TO MY HOME.

AT THE TIME I TURNED IN THIS PETITION, I ASKED THE LADY WHO RECEIVED IT IF IT WAS NECESSARY FOR ME TO APPEAR AT THE BOARD HEARING CALLED FOR MARCH 29TH. SHE TOLD ME IN THE PRESENCE OF MY FRIEND THAT SHE WOULD LET ME KNOW IF THIS WAS REQUIRED. I HAVE RECEIVED NO SUCH NOTICE FROM ANYONE IN THIS REGARD.

I CAN IDENTIFY THE LADY TO WHOM THE PAPERS WERE GIVEN AS CAN MY FELLOW WORKER WHO WAS WITH ME AT THE TIME.

I SINCERELY HOPE, SIR, THAT WE MAY STATE OUR OBJECTION TO CERTIFICATION BEFORE A DECISION IS GIVEN.

YOURS TRULY,

ERCHIL STEWART.

6. THE RULES OF PROCEDURE AND REGULATIONS UNDER THE LABOUR RELATIONS ACT PROVIDE, IN SECTION 11, THE PROCEDURE TO BE FOLLOWED WITH RESPECT TO PETITIONS. IN THE PRESENT CASE, PARTICULAR REGARD SHOULD BE HAD FOR SUBSECTION (3) OF SECTION 11, WHICH IS AS FOLLOWS:-

THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY EMPLOYEE WHO FAILS TO APPEAR IN PERSON OR BY A REPRESENTATIVE AND ADDUCE EVIDENCE THAT INCLUDES TESTIMONY IN THE PERSONAL KNOWLEDGE AND OBSERVATION OF THE WITNESS AS TO,

(A) THE CIRCUMSTANCES CONCERNING THE ORIGATION OF THE STATEMENT OF DESIRE; AND

(B) THE MANNER IN WHICH EACH SIGNATURE ON THE STATEMENT OF DESIRE WAS OBTAINED.

7. IN ADDITION TO THE PROVISIONS OF THE RULES THERE IS CONTAINED IN FORM 5 THE FOLLOWING STATEMENT:-

8. ANY EMPLOYEE, OR GROUP OF EMPLOYEES, WHO HAS INFORMED THE BOARD IN WRITING OF HIS OR THEIR DESIRE IN ACCORDANCE WITH PARAGRAPHS 5 AND 6 MAY ATTEND AND BE HEARD AT THE HEARING IN PERSON OR BY A REPRESENTATIVE. ANY REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY, OR PRODUCE

A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED. THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT FURTHER NOTICE AND WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY PERSON WHO FAILS TO ATTEND.

FORM 5 IS A NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND MUST BE POSTED, AS IT WAS IN THIS CASE, IN CONSPICUOUS PLACES WHERE IT IS MOST LIKELY TO COME TO THE ATTENTION OF ALL EMPLOYEES WHO MAY BE AFFECTED BY THE APPLICATION.

8. THE QUESTION RAISED BY THE TELEGRAM AND LETTER REFERRED TO ABOVE IS WHETHER THE WRITTEN RULES OF PROCEDURE AND THE PROVISIONS PRINTED IN SECTION 8 OF FORM 5 CAN BE ALTERED OR VARIED BY ORAL STATEMENTS OF EMPLOYEES OF THE BOARD, ASSUMING THROUGHOUT THAT THE ALLEGATIONS CONTAINED IN THE LETTER ARE FACTUAL.

9. THE BOARD'S METHOD OF COMMUNICATING ITS RULES AND PROCEDURES TO THE PUBLIC ARE SIMILAR TO THOSE ADOPTED BY THE COURTS, THAT IS, BY THE PUBLICATION OF ITS RULES IN WRITING, IN ADDITION, AND THIS IS SO WITH RESPECT TO FORM 5, SECTION 8, REFERENCE TO THE BOARD'S PROCEDURAL REQUIREMENTS IS FREQUENTLY MADE IN THE PRESCRIBED FORMS. IN THE CASE OF THE RULES OF COURT IT WOULD SURELY BE UNREASONABLE TO ASSUME THAT THE TIME OF ENTERING AN APPEARANCE FOR EXAMPLE, OR FOR THE DOING OF ANY OTHER ACT COULD BE ALTERED BY THE CLERK OR ANY OTHER OF THE OFFICE STAFF OF THE COURT WITH WHOM ONE MIGHT DISCUSS THE MATTER. SIMILARLY, IN THE CASE OF THE BOARD'S RULES OF PROCEDURE, IT COULD NOT BE DEEMED REASONABLE FOR AN ORDINARILY PRUDENT PERSON TO ACCEPT AND ACT UPON THE ORAL STATEMENTS OF AN EMPLOYEE OF THE BOARD WHERE THE WRITTEN RULES PROVIDE THE ANSWER TO THE QUESTION RAISED.

10. IT MAY BE TRITE TO SAY THAT IGNORANCE OF THE LAW PROVIDES NO EXCUSE FOR FAILURE TO COMPLY THEREWITH, NEVERTHELESS IT IS A FACT THAT TO PERMIT A PLEA OF IGNORANCE OR OF MISUNDERSTANDING OR EVEN OF MISLEADING ADVICE FROM AN EMPLOYEE TO, IN EFFECT, REVOKE, VARY OR AMEND THE RULES OF PROCEDURE WOULD BE TO OPEN UP THE BOARD'S RULES TO CHALLENGE AT EVERY TURN AND TO ABUSE WHICH COULD ONLY LEAD TO THEIR COMPLETE USELESSNESS AS AUTHORATIVE INSTRUCTIONS IN MATTERS OF PRACTICE AND PROCEDURE.

11. THE BOARD HAS GIVEN MOST CAREFUL CONSIDERATION TO THE SUBMISSIONS OF THE OBJECTING EMPLOYEES AND HAS COME TO THE CONCLUSION THAT IN THE INTEREST OF ALL PARTIES WHO MAY APPEAR BEFORE THE BOARD AND OF THE PRESERVATION OF A CONSISTENT AND ORDERLY PROCEDURE AND PRACTICE UPON WHOSE STABILITY THOSE PARTIES ARE ENTITLED TO RELY, IT CANNOT GRANT TO THE OBJECTORS THE RELIEF SOUGHT IN THEIR TELEGRAM AND LETTER.

12. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT

MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

13. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

14. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11550-65-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. CAULFEILD BURNS AND GIBSON LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D.B. ARCHER AND F. W. MURRAY.

DECISION OF THE BOARD: (MAY 5, 1966)

1. THE APPLICANT APPLIES FOR CERTIFICATION FOR "ALL EMPLOYEES, SAVE AND EXCEPT FOREMEN, FORELADIES AND THOSE ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE STAFF, SALESMEN AND SHIPPERS LOCATED IN METROPOLITAN TORONTO, ONTARIO." THIS IS AN "INDUSTRIAL" TYPE OF BARGAINING UNIT; THE EXCLUSION OF SHIPPERS IS ANOMALOUS. THE RESPONDENT HAS AGREED TO THE DESCRIPTION OF THE BARGAINING UNIT SUGGESTED BY THE APPLICANT.

2. BY SECTION 6 (1) OF THE LABOUR RELATIONS ACT, THE BOARD IS REQUIRED TO DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING IN EACH CASE. IN MAKING THIS DETERMINATION IN CASES OF "INDUSTRIAL" BARGAINING UNITS, THE BOARD HAS CONSISTENTLY FOLLOWED A POLICY OF REFUSING TO ALLOW THE FRAGMENTATION OF THE BARGAINING UNIT BY THE EXCLUSION OF GROUPS OF EMPLOYEES WHO WOULD NORMALLY BE INCLUDED IN SUCH A UNIT, EXCEPT WHERE IT APPEARS ON THE FACTS BEFORE THE BOARD THAT THE PECULIAR CIRCUMSTANCES WITH RESPECT TO A PARTICULAR GROUP OF EMPLOYEES ARE SUCH THAT THEY WOULD APPROPRIATELY BE EXCLUDED FROM THE BARGAINING UNIT.

3. FOLLOWING THE HEARING IN THIS MATTER, AN EXAMINER WAS APPOINTED "TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT". THE EXAMINER CONVENED A MEETING OF THE PARTIES, AT WHICH A STATEMENT OF FACTS RELATIVE TO THE DUTIES OF SHIPPERS EMPLOYED BY THE RESPONDENT WAS AGREED TO BY THE PARTIES. THE AGREED STATEMENT OF FACTS INCLUDED THE AGREEMENT OF THE APPLICANT AND THE RESPONDENT THAT "THE SHIPPERS IN THE EMPLOY OF THE RESPONDENT DO NOT SHARE A COMMUNITY OF INTEREST WITH PRODUCTION EMPLOYEES AND SHOULD NOT BE INCLUDED IN THE PRODUCTION UNIT." THIS STATEMENT IS, OF COURSE, NOT A STATEMENT OF FACT BUT RATHER A STATEMENT OF THE CONCLUSION REACHED BY THE PARTIES. THE AGREED STATEMENT OF FACTS SET OUT NO FACTS WHICH WOULD LEAD THE BOARD TO A CONCLUSION SUCH AS THAT ARRIVED AT BY THE PARTIES. IN THE RESULT, THE BOARD IS NOT PERSUADED THAT SHIPPERS OUGHT TO BE EXCLUDED FROM THE "ALL-EMPLOYEE" BARGAINING UNIT PROPOSED IN THIS CASE.

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7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11575-65-R: BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA,
LOCAL UNION 1630 (SIGN & PICTORIAL) (APPLICANT) V. SLIMLITE LIMITED
(RESPONDENT).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND H. F. IRWIN.

APPEARANCES AT HEARING: JAMES E. CALEY, JOHN DONKERS AND ALBERT ROSS
FOR THE APPLICANT, AND DONALD E. HOUCK AND PATRICK J. ANDERSON FOR THE
RESPONDENT.

DECISION OF THE BOARD: (MAY 3, 1966)

1. THIS IS AN APPLICATION FOR CERTIFICATION
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4. THE APPLICANT FILED A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS
(FORM 9). THIS DOCUMENT WAS COMPLETED BY JAMES E. CALEY, BUSINESS REPRESENTATIVE OF THE APPLICANT, AND PURPORTS TO BE BASED ON THE PERSONAL KNOWLEDGE OF THE DECLARANT.

5. AN EXAMINATION OF THE MEMBERSHIP DOCUMENTS BY THE BOARD AT THE HEARING INDICATED THAT JAMES E. CALEY'S SIGNATURE DOES NOT APPEAR ON ANY OF THE CARDS FILED WITH THE BOARD. FURTHER INQUIRY BY THE BOARD ELICITED THE INFORMATION THAT MR. CALEY HAD NOT BEEN INSTRUMENTAL IN OBTAINING ANY APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT NOR HAD HE COLLECTED ANY MONEY FROM PROSPECTIVE MEMBERS. IT DEVELOPED THAT MR. CALEY HAD COMPLETED FORM 9 ON THE BASIS OF THE FACT THAT HE KNEW ALL THE PERSONS WHO HAD SIGNED MEMBERSHIP CARDS, ALTHOUGH HE MADE NO INQUIRIES OF THEM WITH RESPECT TO THE PAYMENT OF FEES, AND THAT HE HAD HAD SOME CONVERSATION WITH ONE JOHN DONKERS CONCERNING MEMBERSHIP CARDS, WHICH CONVERSATION FELL SHORT OF AN INQUIRY INTO THE MATTER OF THE PAYMENT OF MEMBERSHIP FEES.

6. IT IS CLEAR FROM THE FOREGOING THAT THE INFORMATION CONTAINED IN FORM 9 IS NOT BASED UPON PERSONAL KNOWLEDGE AS THAT TERM IS UNDERSTOOD IN THE CONTEXT OF FORM 9 AND THAT MR. CALEY WAS SERIOUSLY IN ERROR IN COMPLETING THE DOCUMENT IN THE MANNER IN WHICH HE DID. MR. CALEY SUBMITTED THAT HE ACTED IN GOOD FAITH AND WITHOUT INTENT TO DECEIVE OR MISLEAD THE BOARD AND URGED THAT HE HAD MISUNDERSTOOD OR MISINTERPRETED THE REQUIREMENTS OF FORM 9, THIS BEING HIS FIRST APPEARANCE BEFORE THE BOARD. BE THAT AS IT MAY, THE BOARD CANNOT MODIFY OR DEROGATE FROM THE STRICT REQUIREMENTS OF TRUTH, ACCURACY AND INTEGRITY WHICH IT CONSISTENTLY DEMANDS WITH RESPECT TO THE PREPARATION AND PRESENTATION OF DOCUMENTARY PROOF OF MEMBERSHIP ON THE GROUNDS URGED BY MR. CALEY. THIS IS PARTICULARLY SO WHEN

THE DECLARATION PURPORTS TO BE BASED ON PERSONAL KNOWLEDGE, AND THERE IS NOT ONLY AN ABSENCE OF PERSONAL KNOWLEDGE BUT ALSO A FAILURE TO MAKE ANY INQUIRIES OF THE PERSON WHO ACTUALLY MADE THE COLLECTIONS AND SIGNED THE RECEIPTS AS TO THE ACCURACY OF THE INFORMATION CONTAINED IN THE CARDS AND RECEIPTS. MR. CALEY SHOWED, AT THE LEAST, GROSS CARELESSNESS IN THE PREPARATION OF FORM 9, AND WERE IT NOT FOR THE EVIDENCE SUBSEQUENTLY GIVEN AT THE HEARING BY THE COLLECTOR, JOHN DONKERS, THE BOARD WOULD HAVE NO ALTERNATIVE OTHER THAN TO DISMISS THE APPLICATION.

7. JOHN DONKERS GAVE EVIDENCE THAT HIS NAME APPEARED UPON ALL THE RECEIPTS FOR INITIATION FEES AND THAT 75% OF THE MEMBERS HAD PERSONALLY PAID IN MONEY THE AMOUNT SHOWN ON THE RECEIPT ON HIS OWN BEHALF DIRECTLY TO HIM, JOHN DONKERS, AS COLLECTOR AND ABOUT 25% OF THE MEMBERS INDIRECTLY TO HIM AS COLLECTOR.

8. WITH RESPECT TO THE APPROXIMATELY 25% OF THE MEMBERS, JOHN DONKERS EXPLAINED THAT HE HAD MET WITH A GROUP OF APPROXIMATELY 10 EMPLOYEES IN A RESTAURANT FOR THE PURPOSE OF DISCUSSING MEMBERSHIP IN THE UNION. PRESENT AT THIS MEETING WAS ONE PAUL KAUFOLD WHO, IN THE PRESENCE OF DONKERS, COLLECTED \$1.00 PAYMENTS FROM 7 EMPLOYEES THERE PRESENT. KAUFOLD HANDED THE SEVEN DOLLARS TO DONKERS WHO THEN COMPLETED THE RECEIPTS ON THE CARDS AND HAD THE SAME COUNTERSIGNED BY THE EMPLOYEES CONCERNED.

9. IT APPEARED AT ONE STAGE DURING HIS STATEMENT THAT DONKERS WAS ALLEGING THAT PAUL KAUFOLD HAD COLLECTED MONEY FROM EMPLOYEES OTHER THAN THE 7 IN THE RESTAURANT. ON BEING QUESTIONED ON THIS POINT DONKERS STATED THAT NOBODY, OTHER THAN THE SEVEN REFERRED TO, HAD SIGNED MEMBERSHIP CARDS FROM WHOM HE HAD NOT PERSONALLY COLLECTED THE INITIATION FEE.

10. THE BOARD ACCEPTS THE EVIDENCE OF JOHN DONKERS AS CONFIRMING THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT AND IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11594-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. KOHEN BOX CO. (WINDSOR) LIMITED (RESPONDENT) v. LOCAL 802-UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT HEARING: W. Z. ESTEY, Q.C., AND ROBERT WHITE FOR THE APPLICANT, W. L. FARRAR AND MORRIS KOHEN FOR THE RESPONDENT, AND ALBERT LALONDE FOR THE INTERVENER.

DECISION OF THE BOARD: (MAY 16, 1966)

2. THE APPLICANT APPLIES FOR CERTIFICATION FOR A UNIT OF EMPLOYEES OF THE RESPONDENT AT ITS PLANT KNOWN AS ITS CONCORD DIVISION PLANT IN THAT PART OF THE CITY OF WINDSOR WHICH WAS FORMERLY THE TOWN OF OJIBWAY. THE INTERVENER OBJECTS TO THE APPLICATION ON THE GROUND THAT THE INTERVENER IS BARGAINING AGENT FOR ALL OF THE EMPLOYEES OF THE RESPONDENT AT WINDSOR (WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL), INCLUDING THE EMPLOYEES FOR WHOM BARGAINING RIGHTS ARE NOW SOUGHT BY THE APPLICANT.

3. THE INTERVENER WAS CERTIFIED BY THE BOARD ON MARCH 30TH, 1965, AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL. ON OCTOBER 15TH, 1965, THE INTERVENER ENTERED INTO A COLLECTIVE AGREEMENT WITH THE RESPONDENT, IN WHICH THE RESPONDENT RECOGNIZED THE INTERVENER AS BARGAINING AGENT FOR ITS EMPLOYEES IN ACCORDANCE WITH THE PROVISIONS OF THE BOARD'S CERTIFICATE. THE COLLECTIVE AGREEMENT IS EFFECTIVE UNTIL JULY 8TH, 1967. IF, AS THE INTERVENER AND THE RESPONDENT CONTEND, THE EMPLOYEES IN THE BARGAINING UNIT NOW SOUGHT BY THE APPLICANT DO IN FACT COME WITHIN THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT, THEN THIS APPLICATION IS UNTIMELY BY VIRTUE OF THE PROVISION OF SECTION 5 OF THE LABOUR RELATIONS ACT.

4. AT THE TIME OF THE GRANTING OF THE BOARD'S CERTIFICATE AND AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO, THE CITY OF WINDSOR DID NOT EXTEND TO INCLUDE THE AREA IN WHICH THE CONCORD DIVISION PLANT IS SITUATED. UNTIL DECEMBER 31ST, 1965, THIS AREA CONSTITUTED THE TOWN OF OJIBWAY. ON JANUARY 1ST, 1966, HOWEVER, THE TOWN OF OJIBWAY WAS ANNEXED TO THE CITY OF WINDSOR AND, AT THE TIME THIS APPLICATION WAS MADE, NO LONGER EXISTED. READ LITERALLY, THEREFORE, IT IS CLEAR THAT THE BARGAINING UNIT REPRESENTED BY THE INTERVENER, THAT IS, "ALL EMPLOYEES - - - AT WINDSOR" WOULD INCLUDE THOSE PERSONS WHOM THE APPLICANT NOW SEEKS TO REPRESENT. FURTHER, THERE IS EVIDENCE THAT THE INTERVENER ACTED AS BARGAINING AGENT FOR EMPLOYEES IN THE CONCORD DIVISION PLANT, AND THAT THE RESPONDENT ACCEPTED IT AS SUCH.

5. THE APPLICANT ARGUES, HOWEVER, THAT THE BOARD'S CERTIFICATE SHOULD BE READ AS SPEAKING ONLY AS OF THE DATE OF ITS ISSUANCE, AND FURTHER THAT THE COLLECTIVE AGREEMENT WAS NOT INTENDED TO COVER EMPLOYEES IN THE BARGAINING UNIT FOR WHICH THE APPLICANT NOW SEEKS CERTIFICATION. WE CANNOT ACCEPT THESE ARGUMENTS. THE BARGAINING RIGHTS WHICH FLOW FROM CERTIFICATION OR FROM RECOGNITION OF A TRADE UNION BY AN EMPLOYER ARE LIABLE, SUBJECT TO THE TERMS OF THE DESCRIPTION OF THE BARGAINING UNIT, TO ACCRETION AND DIMINUTION ACCORDING TO THE EXPANSION OR CONTRACTION OF THE EMPLOYER'S OPERATIONS. THUS FOR INSTANCE, WHERE AN EMPLOYER OPENS A NEW PLANT WITHIN THE GEOGRAPHICAL AREA REFERRED TO IN A CERTIFICATE OF THIS BOARD OR IN A COLLECTIVE AGREEMENT THERE IS NO DOUBT THAT (UNLESS THE BARGAINING UNIT HAD BEEN EXPRESSLY LIMITED TO EXISTING OPERATIONS), THE BARGAINING AGENT WHICH HAD REPRESENTED EMPLOYEES IN THE DEFINED UNIT REPRESENTS AS WELL EMPLOYEES IN THE NEW PLANT BY VIRTUE OF THE TERMS OF THE DEFINITION OF THE BARGAINING UNIT. IN OUR VIEW, THERE IS

AN ANALOGY BETWEEN CIRCUMSTANCES SUCH AS THOSE JUST DESCRIBED, AND THE INSTANT CASE, WHERE THE BOUNDARIES OF THE GEOGRAPHICAL AREA ITSELF HAVE BEEN ENLARGED. IT MAY BE NOTED THAT, ALTHOUGH THE RESPONDENT BEGAN TO DEVELOP ITS OPERATIONS IN OJIBWAY IN DECEMBER 1965, THE OPERATION DID NOT BECOME FULLY DEVELOPED UNTIL LATE JANUARY 1966, BY WHICH TIME IT WAS WITHIN THE NEW BOUNDARIES OF THE CITY OF WINDSOR. ALTHOUGH THE ISSUE DOES NOT ARISE IN THE INSTANT CASE, WE OBSERVE THAT THE SITUATION WOULD BE DIFFERENT HAD THE EMPLOYEES IN THE OJIBWAY PLANT BEEN REPRESENTED BY ANOTHER TRADE UNION BEFORE THE TOWN OF OJIBWAY BECAME ANNEXED TO THE CITY OF WINDSOR.

6. IN THE INSTANT CASE, IT IS OUR CONCLUSION THAT THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE INTERVENER AND THE RESPONDENT COVERS THOSE EMPLOYEES OF THE RESPONDENT FOR WHOM THE APPLICANT NOW SEEKS CERTIFICATION. THE APPLICATION THEREFORE IS UNTIMELY AND IS ACCORDINGLY DISMISSED.

11612-66-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO (APPLICANT) V. GENERAL INSTRUMENT OF CANADA LTD. (RESPONDENT, V. GENERAL INSTRUMENT, MOUNT FOREST EMPLOYEES' UNION (INTERVENER)).

BEFORE J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT HEARING: IAN G. SCOTT AND HARRY HADDAWAY FOR THE APPLICANT, R. MEUNIER AND R. RITCHIE FOR THE RESPONDENT, AND GEORGE C. LOUCKS, ALFRED TIMPERLEY, DOROTHY MOYER AND RUTH GREIN FOR THE INTERVENER.

DECISION OF J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER F. W. MURRAY: (MAY 31, 1966)

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2. THE EVIDENCE WITH RESPECT TO THE FORMATION OF THE INTERVENER SATISFIES THE BOARD AS TO THE EXISTENCE AND OBJECTS OF THE ORGANIZATION, AND DISCLOSES NO IRREGULARITY WHICH WOULD LEAD THE BOARD TO REFUSE TO FIND THAT IT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT. THE BOARD FINDS THAT THE INTERVENER IS A TRADE UNION.

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DECISION OF BOARD MEMBER E. BOYER: (MAY 31, 1966)

THE FACTS PERTAINING TO THE FORMATION OF THE INTERVENING EMPLOYEES' ASSOCIATION ARE AS FOLLOWS:

ON THE AFTERNOON OF APRIL 2ND, 1966, THREE EMPLOYEES MET IN THE OFFICE OF GEORGE C. LOUCKS, A SOLICITOR IN CHESLEY. THEY PROCEEDED TO ADOPT A CONSTITUTION WHICH HAD BEEN DRAFTED BY MR. LOUCKS. AT A SUBSEQUENT MEETING,

THE SAME AFTERNOON, THEY ELECTED EACH OTHER TO OFFICE IN "THE GENERAL INSTRUMENT MOUNT FOREST EMPLOYEES' UNION."

THE ISSUE IS WHETHER "THE GENERAL INSTRUMENT MOUNT FOREST EMPLOYEES' UNION" IS A "TRADE UNION" WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. ON THE BASIS OF THE EVIDENCE GIVEN AT THE HEARING IN THIS MATTER ON MAY 2ND, 1966, I CANNOT FIND THAT THE INTERVENER IS A "TRADE UNION" WITHIN THE MEANING OF THE GOVERNING LEGISLATION.

CONSIDERING THE NUMBER OF PERSONS IN THE EMPLOY OF THE RESPONDENT, THE ATTENDANCE OF ONLY THREE PERSONS AT THE OFFICES OF A SOLICITOR TO ADOPT A CONSTITUTION AND TO ELECT OFFICERS LEAVES SOMETHING TO BE DESIRED. THIS INADEQUACY IS COMPOUNDED BY THE FACT THAT THE MEETING WAS HELD AT CHESLEY WHICH IS SOME FORTY MILES DISTANT FROM MOUNT FOREST, THE SITE OF THE RESPONDENT'S PLANT.

ON CROSS-EXAMINATION, MRS. DOROTHY MOYER, SECRETARY-TREASURER OF THE INTERVENER, TESTIFIED THAT THE MEETINGS AT MR. LOUCKS' OFFICE WERE NOT ADVERTISED. THE EMPLOYEES RECEIVED NOTICE OF THE MEETINGS "ONLY BY WORD OF MOUTH". TAKING INTO CONSIDERATION THE BENEFITS WHICH A DEMOCRATIC TRADE UNION OUGHT TO CONFER UPON ITS MEMBERS, BOTH PRESENT AND PROSPECTIVE, THE NOTICE TO EMPLOYEES OF THE MEETINGS, TO SAY THE LEAST, WAS MOST INADEQUATE. THE EMPLOYEES OF THE RESPONDENT WHO GENUINELY MAY HAVE WISHED TO BE REPRESENTED BY AN "INSIDE" UNION HAD NO REAL OPPORTUNITY TO PARTICIPATE IN THE FORMATION OF THE INTERVENING ORGANIZATION, IN THE DRAFTING OF ITS CONSTITUTION, OR IN THE ELECTION OF ITS OFFICERS.

THE NEXT POINT IS THE GENERAL INADEQUACY OF THE CONSTITUTION ITSELF. THERE IS NO FIXED TERM OF OFFICE FOR ELECTED OFFICERS OF THE EMPLOYEES' ASSOCIATION. THERE IS NO PROVISION FOR REGULAR MONTHLY OR QUARTERLY MEETINGS WHEREAT THE GENERAL MEMBERSHIP COULD VOICE THEIR SAY IN THE AFFAIRS OF THE ASSOCIATION. FURTHERMORE, THE CONSTITUTION DOES NOT PROVIDE AN APPEAL PROCEDURE FOR MEMBERS WHO MAY BE AFFECTED BY DISCIPLINARY ACTION.

WHEN PERSONS ARE FORMING A TRADE UNION, THEY MUST INTEND, BY THE VERY NATURE OF THE ORGANIZATION, TO GIVE IT SOME DEGREE OF PERMANENCY. SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT REQUIRES THAT A TRADE UNION HAVE "THE REGULATION OF RELATIONS BETWEEN EMPLOYEES AND EMPLOYERS" AS ONE OF ITS PURPOSES. DESPITE SUCH A PROVISION IN THE INTERVENER'S CONSTITUTION, ALFRED TIMPERLEY, PRESIDENT OF THE INTERVENER, TESTIFIED THAT IF THE INTERVENER WERE NOT CERTIFIED, ANY MONEY COLLECTED WOULD BE RETURNED.

ARTICLE 5 OF THE INTERVENER'S CONSTITUTION WHICH ESTABLISHES A MONTHLY MEMBERSHIP FEE OF \$1.00 ALSO ENABLES THE "EXECUTIVE COMMITTEE" TO SUSPEND THE PAYMENT OF DUES "FOR SUCH LENGTH OF TIME AS IT DEEMS ADVISABLE AND IN THE BEST INTERESTS OF THE UNION." INDEED, AT AN EXECUTIVE MEETING HELD ON APRIL 13TH, 1966, IN MR. LOUCKS' OFFICE, IT WAS "UNANIMOUSLY RESOLVED THAT PAYMENT OF UNION DUES BE SUSPENDED TILL FURTHER NOTICE." SURELY, IN ITS FORMATIVE YEARS, A BONA FIDE TRADE UNION REALISTICALLY CANNOT AFFORD TO SUSPEND THE PAYMENT OF DUES. IT IS NOTED, NOT WITHOUT INTEREST, THAT THE

SUSPENSION OF DUES OCCURRED ONE DAY BEFORE THE TERMINAL DATE IN THE INSTANT APPLICATION.

ALTHOUGH THE WITNESS TIMPERLEY TESTIFIED THAT THE INTERVENER WAS FORMED WITHOUT ANY ASSISTANCE FROM MANAGEMENT AND ALTHOUGH THE CONSTITUTION PRECLUDES MEMBERSHIP TO FOREMEN. MRS. MOYERS, THE SECRETARY-TREASURER, GAVE EVIDENCE THAT BETTY KIRBY AND RUTH McCLELLAND, TWO SUPERVISORS IN THE EMPLOY OF THE RESPONDENT, HAD SIGNED CARDS IN THE ASSOCIATION.

ON THE BASIS OF ALL THE EVIDENCE, I CANNOT FIND THAT IT WAS THE INTENTION OF THE WITNESSES TIMERLEY, MOYER, AND GREIN TO ESTABLISH A TRADE UNION WHICH WOULD SATISFY THE REQUIREMENTS OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT. IN MY OPINION, "THE GENERAL INSTRUMENT MOUNT FOREST EMPLOYEES' UNION" WAS CREATED FOR THE SOLE PURPOSE OF THWARTING THE ORGANIZATIONAL CAMPAIGN OF THE APPLICANT. TO REITERATE, THE INTERVENER WAS FORMED IN A MOST UNDEMOCRATIC MANNER, WITHOUT ANY APPARENT SENSE OF PERMANENCY, AND WITH A MOST INADEQUATE CONSTITUTION.

I WOULD, THEREFORE, DISMISS THE INTERVENER'S APPLICATION FOR CERTIFICATION.

11680-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 27 (APPLICANT) v. TRICONT PROJECTS LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT HEARING: BASIL CLARK AND CHARLES DUNCAN APPEARING FOR THE APPLICANT AND B. W. BINNING AND MARK FRIEDMAN APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: (MAY 6, 1966)

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2. THE RESPONDENT SUBMITS THAT IT DOES NOT OPERATE A BUSINESS IN THE CONSTRUCTION INDUSTRY AS DEFINED IN SECTION 1(1)(DA) OF THE LABOUR RELATIONS ACT AND, FURTHER, THAT IT IS NOT AN EMPLOYER WITHIN THE MEANING OF SECTION 90(A) OF THE ACT. THE RESPONDENT AND TRICONT HOLDINGS LIMITED ARE LAND DEVELOPMENT COMPANIES WHOSE "PRIME PURPOSES" ARE TO BUY LAND. THE BUILDING PROJECT WHICH IS THE SUBJECT MATTER OF THE PRESENT APPLICATION IS SITUATED ON LAND OWNED BY TRICONT HOLDINGS LIMITED. THE RESPONDENT COMPANY, TRICONT PROJECTS LIMITED, IS BUILDING A BUILDING ON THE LAND, WHICH WHEN COMPLETED WILL ALONG WITH THE LAND LEASED TO A THIRD COMPANY, VOLKSWAGEN (CANADA) LIMITED UNDER A TWENTY-FIVE YEAR LEASE. UNDER THE LEASE THE LANDLORD IS RESPONSIBLE FOR THE MAINTENANCE OF THE BUILDING. THE RESPONDENT STATES THAT IT WILL NOT ENGAGE IN THE FUTURE IN OTHER CONSTRUCTION WORK. IT WILL, HOWEVER, CONTINUE TO BUY LAND AND THERE IS NO REASON WHY IT MAY NOT SUBSEQUENTLY

CHANGE ITS "CORPORATE MIND" AND AGAIN ENGAGE IN CONSTRUCTION WORK. IN OTHER WORDS WHETHER THE RESPONDENT DOES OR DOES NOT UNDERTAKE CONSTRUCTION WORK IN THE FUTURE IS A MATTER OF SHEER SPECULATION. THE CASE, THEREFORE, MUST BE DEALT WITH ON THE BASIS THAT THE RESPONDENT, A LAND DEVELOPMENT COMPANY, IS ENGAGED FOR THE FIRST TIME IN CONSTRUCTING A BUILDING WHICH WILL SUBSEQUENTLY BE LEASED OUT TO A THIRD COMPANY, THE RESPONDENT BEING RESPONSIBLE FOR SUBSEQUENT MAINTENANCE WORK ON THE BUILDING.

THE BOARD HAS HAD OCCASION TO DEAL WITH SUBSTANTIALLY SIMILAR SITUATIONS IN A NUMBER OF CASES. THESE ARE: TOPS MARINA MOTOR HOTEL CASE, 64 C.L.L.C., ¶16,004, O.L.R.B. MONTHLY REPORT, JANUARY 1964, P. 583; STRATHCONA HOUSE CASE, BOARD FILE NUMBER 10947-65-R AND CANADIA NIAGARA FALLS LIMITED CASE, BOARD FILE NUMBER 11527-65-R. THE ARGUMENTS ADVANCED BY THE RESPONDENT IN THE PRESENT CASE ARE THE SAME AS THOSE CONSIDERED BY THE BOARD IN THE CASES CITED ABOVE. AFTER DUE CONSIDERATION WE ARE NOT PREPARED TO DEPART FROM THE PRINCIPLES ESTABLISHED IN THE OTHER CASES. THE BOARD, THEREFORE, FURTHER FINDS THAT WITH RESPECT TO THE CONSTRUCTION ASPECTS OF THE RESPONDENT'S BUSINESS IT IS OPERATING A BUSINESS IN THE CONSTRUCTION INDUSTRY AS DEFINED IN SECTION 1(1)(DA) OF THE LABOUR RELATIONS ACT AND, FURTHER, THAT THIS APPLICATION FOR CERTIFICATION IS ONE FALLING WITHIN SECTION 92 OF THE SAID ACT.

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5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11683-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. BILL BAILEY THE OIL MAN (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND D. FORGIE.

APPEARANCES AT HEARING: D. MACDONALD FOR THE APPLICANT, WARREN K. WINKLER FOR THE RESPONDENT, AND NO ONE APPEARING FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (MAY 16, 1966)

1. THIS IS AN APPLICATION FOR CERTIFICATION.

2. AT THE HEARING IN THIS MATTER, COUNSEL FOR THE RESPONDENT REQUESTED AN ADJOURNMENT ON THE GROUND THAT THE RESPONDENT HAD BEEN MISLED BY CERTAIN INFORMATION WHICH COUNSEL HAD BEEN GIVEN BY THE REGISTRAR OF THE BOARD. COUNSEL STATED THAT THE RESPONDENT HAD IN ERROR RETURNED TO THE BOARD UNCOMPLETED DOCUMENTS WHICH HAD BEEN SENT TO HIM BY THE BOARD IN CONNECTION WITH THIS APPLICATION. THERE WERE ENCLOSED WITH THE DOCUMENTS RETURNED TO THE BOARD BY THE RESPONDENT THREE SEALED ENVELOPES EACH OF WHICH CONTAINED A LETTER FROM A PERSON PURPORTING TO BE AN EMPLOYEE OF THE RESPONDENT OBJECTING TO THE APPLICATION. COUNSEL MADE CERTAIN INQUIRIES OF THE REGISTRAR

AND WAS ADVISED THAT THE BOARD'S USUAL PRACTICE WAS TO SEND SUCH DOCUMENTS TO THE RESPONDENT ONCE AGAIN. COUNSEL FOR THE RESPONDENT CONCLUDED FROM THIS, THAT IN ORDER THAT THE RESPONDENT WOULD HAVE SUFFICIENT TIME TO COMPLETE THE DOCUMENTS THE HEARING OF THIS MATTER WOULD BE ADJOURNED. INDEED, COUNSEL ONLY APPEARED AT THE HEARING BY COINCIDENCE, HAVING APPEARED AT THE HEARING OF THE MATTERS IMMEDIATELY PRECEDING THIS. THERE WAS NO ADJOURNMENT OF THIS MATTER ASKED FOR OR GRANTED BEFORE THE HEARING, NOR WERE THE PARTIES GIVEN ANY NOTICE TO THAT EFFECT. THE DOCUMENTS IN QUESTION, HOWEVER, HAD THROUGH ERROR NOT BEEN SENT BACK TO THE RESPONDENT. THESE DOCUMENTS, ORIGINALLY RECEIVED BY THE RESPONDENT, INCLUDED A NOTICE OF THIS APPLICATION AND OF THE HEARING. THEY INCLUDED AS WELL A COPY OF FORM 5, NOTICE TO EMPLOYEES, WHICH THE RESPONDENT WAS DIRECTED TO POST. SINCE THERE WAS DOUBT WHETHER THE EMPLOYEES OF THE RESPONDENT HAD IN FACT RECEIVED NOTICE OF THE APPLICATION, THE BOARD CAUSED COPIES OF THAT NOTICE TO BE SENT BY REGISTERED MAIL TO EACH OF THE PERSONS WHOSE NAMES APPEARED ON THE ABOVE MENTIONED LETTERS OF OBJECTION, AND THE BOARD'S OFFICER POSTED FORM 5 ON THE PREMISES OF THE RESPONDENT. IT IS CLEAR THAT THERE WAS AMPLE NOTICE OF HEARING GIVEN ALL PERSONS CONCERNED AND THAT THERE WAS NO ADJOURNMENT OR NOTICE OF ADJOURNMENT BEFORE THE HEARING. IN OUR OPINION, THE INFORMATION GIVEN COUNSEL BY THE REGISTRAR COULD NOT REASONABLY BE CONSTRUED AS NOTICE OF ADJOURNMENT. THE ADJOURNMENT REQUESTED AT THE HEARING WAS REFUSED.

3. FOLLOWING THE HEARING, THE REGISTRAR WAS DIRECTED TO SEND AND DID SEND THE FORMS FOR THE MAKING OF A FORMAL REPLY, TOGETHER WITH COPIES OF SCHEDULES "A", "B", "C" AND "D" (TO BE USED FOR SETTING OUT THE LIST OF EMPLOYEES OF THE RESPONDENT), WHICH THE RESPONDENT WAS REQUESTED TO COMPLETE AND TO SEND TO THE BOARD, TOGETHER WITH SPECIMEN SIGNATURES OF THE EMPLOYEES. THESE DOCUMENTS WERE SENT BY REGISTERED MAIL, ADDRESSED TO THE RESPONDENT. THEY WERE RETURNED TO THE BOARD BY THE POSTAL AUTHORITIES MARKED "REFUSED".

4. COUNSEL FOR THE RESPONDENT, HOWEVER, DID SEND TO THE BOARD A FORMAL REPLY IN THIS MATTER, TOGETHER WITH A LIST OF THE EMPLOYEES OF THE RESPONDENT, AND, LATER, SPECIMEN SIGNATURES OF THE EMPLOYEES. THIS LIST OF EMPLOYEES AND SPECIMEN SIGNATURES HAVE, ACCORDING TO THE BOARD'S USUAL PRACTICE, BEEN COMPARED WITH THE EVIDENCE OF MEMBERSHIP WHICH WAS FILED BY THE APPLICANT AND WHICH WAS DESCRIBED AT THE HEARING. THAT COMPARISON YIELDS THE FOLLOWING RESULTS:

(1) NUMBER OF NAMES ON EMPLOYER'S LIST:	3
(2) NUMBER OF APPLICATIONS FOR MEMBERSHIP CONFIRMED BY RECEIPTS FILED BY APPLICANT:	2
(3) NUMBER OF APPLICATIONS IN (2) IN WHICH NAMES COINCIDE WITH NAMES IN (1):	1
(4) NUMBER OF OBJECTORS:	3
(5) NUMBER OF OBJECTORS WHOSE NAMES APPEAR IN (1):	2

(6) NUMBER OF OBJECTORS WHOSE NAMES APPEAR
IN (3):

1

5. FAILING OBJECTION BY ANY OF THE PARTIES, THE BOARD PROPOSES TO DISPOSE OF THIS APPLICATION ON THE BASIS OF THE EVIDENCE NOW BEFORE IT, ON TUESDAY, MAY 24, 1966.

INDEXED ENDORSEMENTS - TERMINATION

11117-65-R: ALBERT A. HEBERT (APPLICANT) V. THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (RESPONDENT) V. IRVING CHARLES SUPERMARKETS LIMITED (INTERVENER)

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: JAMES B. CHADWICK AND ALBERT HEBERT APPEARING FOR THE APPLICANT, THOMAS L. REES AND JEAN THERIEN APPEARING FOR THE RESPONDENT, R. D. PERKINS, CHARLES TAYLOR AND L. SUGARMAN APPEARING FOR THE INTERVENER.

DECISION OF J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER
H. F. IRWIN. (MAY 11, 1966)

1. THE APPLICANT APPLIED ON NOVEMBER 23RD, 1965 PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT FOR THAT UNIT OF EMPLOYEES REPRESENTED BY THE RESPONDENT WHICH MAY BE DESCRIBED AS THE FULL-TIME EMPLOYEES EMPLOYED BY THE INTERVENER AT ITS STORE AT 245 RIDEAU STREET IN OTTAWA. THERE WAS NOTHING IN THE EVIDENCE ADDUCED BY THE APPLICANT WHICH WOULD CAUSE THE BOARD TO FIND THAT THE PETITION DOES NOT REPRESENT THE VOLUNTARY WISHES OF THE EMPLOYEES.

2. THE RESPONDENT MADE ALLEGATIONS OF UNFAIR CONDUCT AGAINST THE INTERVENER AND AT THE HEARINGS IN THIS MATTER HELD ON MAY 5TH AND MAY 6TH, 1966, THE RESPONDENT CALLED EVIDENCE IN SUPPORT OF ITS CHARGES THAT THE INTERVENER HAD MANIPULATED THIS APPLICATION. WHILE THAT PORTION OF THE EVIDENCE ADDUCED THROUGH THE RESPONDENT'S WITNESSES WHICH THE BOARD ACCEPTS RAISES CERTAIN SUSPICIONS, THE BOARD IS OF OPINION THAT THE RESPONDENT HAS FAILED TO SATISFY THE ONUS UPON IT TO ESTABLISH THE ALLEGATIONS THAT THE PETITION SIGNED BY THE EMPLOYEES IN SUPPORT OF THIS APPLICATION DOES NOT REPRESENT THE VOLUNTARY SIGNIFICATION IN WRITING THAT THE EMPLOYEES NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.

3. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS MADE TO THE BOARD, THE BOARD IS SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF IRVING CHARLES SUPERMARKETS LIMITED IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED

BY THE RESPONDENT. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF IRVING CHARLES SUPERMARKETS LIMITED. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF IRVING CHARLES SUPERMARKETS LIMITED AT ITS STORE AT 245 RIDEAU STREET IN OTTAWA, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGERS, PERSONS REGULARLY EMPLOYED FOR NOT LESS THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

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DECISION OF BOARD MEMBER E. BOYER. (MAY 11, 1966)

I DISSENT.

I WOULD HAVE FOUND THAT THE PETITION DOES NOT REPRESENT THE TRUE WISHES OF THE EMPLOYEES IN THIS MATTER.

11460-65-R: INTERNATIONAL WOODERS AND ALLIED WORKERS UNION, AFL-CIO-CLC, (APPLICANT) V. TWEED VENEERS LIMITED SHOP UNION (RESPONDENT) V. TWEED VENEERS LIMITED (INTERVENER).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOERS MEMBERS D. McDERMOTT AND F. W. MURRAY.

APPEARANCES AT HEARING: EDWARD C. WITTHAMES AND DOUGLAS CRAWFORD FOR THE APPLICANT, WALTER VILNEFF AND DONALD VILNEFF FOR THE RESPONDENT, AND GEO. L. FENWICK AND BARRY HUNTER FOR THE INTERVENER.

DECISION OF THE BOARD: (MAY 10, 1966)

1. THE APPLICANT, WHICH REPRESENTS CERTAIN EMPLOYEES OF THE INTERVENER, APPLIES FOR A DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT, PURSUANT TO SECTION 45A OF THE LABOUR RELATIONS ACT. THE RESPONDENT, TWEED VENEERS LIMITED SHOP UNION, AND THE INTERVENER, TWEED VENEERS LIMITED, RELY ON A DOCUMENT PURPORTING TO BE A COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THEM ON AUGUST 3RD, 1965, AND EFFECTIVE AUGUST 1ST, 1965, BEING THE FIRST SUCH AGREEMENT BETWEEN THE PARTIES. IN THESE CIRCUMSTANCES, SECTION 45A (3) OF THE ACT PROVIDES THAT THE ONUS OF ESTABLISHING THAT THE TRADE UNION WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT, AT THE TIME THE AGREEMENT WAS ENTERED INTO, IS UPON THE PARTIES RELYING ON THE AGREEMENT. IN ATTEMPTING TO DISCHARGE THIS ONUS THE RESPONDENT AND THE INTERVENER CALLED EVIDENCE AS TO THE FORMATION OF THE RESPONDENT ORGANIZATION AND AS TO ITS DEALINGS WITH THE INTERVENER COMPANY. THE RESPONDENT'S CONSTITUTION AND THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WERE SUBMITTED AS EXHIBITS. THE APPLICANT CALLED NO EVIDENCE, BUT ARGUED ON THE BASIS OF THE EVIDENCE SUBMITTED ON BEHALF OF THE RESPONDENT AND THE INTERVENER THAT THE PARTIES TO THE AGREEMENT HAVE NOT DISCHARGED THE ONUS WHICH IS UPON

THEM BY VIRTUE OF SECTION 45A (3).

2. FOLLOWING THE HEARING, THE APPLICANT, BY LEAVE, SUBMITTED WRITTEN ARGUMENT RELATING TO THE EXHIBITS FILED IN THIS MATTER, AND THE RESPONDENT AND INTERVENER MADE REPLIES THERETO. THE APPLICANT RAISED SEVERAL ARGUMENTS RELATING TO THE CONSTITUTION OF THE RESPONDENT AND TO THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER. THE FIRST OF THESE WAS THAT THE CONSTITUTION OF THE RESPONDENT CONTAINED NO CLAUSE PROHIBITING DISCRIMINATION BASED ON RACE, CREED, COLOUR, NATIONALITY, ANCESTRY OR PLACE OF ORIGIN. THE LABOUR RELATIONS ACT BY SECTION 10 AND BY SECTION 36 IMPOSES CERTAIN CONSEQUENCES IN RESPECT OF TRADE UNIONS DISCRIMINATING AGAINST ANY PERSON IN SUCH A WAY. THERE IS NO REQUIREMENT, HOWEVER, THAT SUCH A PROVISION APPEAR IN THE CONSTITUTION OF A TRADE UNION. IT IS THE FACT OF DISCRIMINATION AT WHICH THE STATUTORY PROVISION IS DIRECTED AND THERE IS NO EVIDENCE THAT THE RESPONDENT ORGANIZATION IN FACT EXERCISED ANY SUCH IMPROPER DISCRIMINATION. THE APPLICANT NEXT ARGUED THAT THE CONSTITUTION GAVE VERY BROAD POWERS TO THE DIRECTORS OF THE RESPONDENT ORGANIZATION. HOWEVER THIS MAY BE, IT WOULD NOT IN ITSELF DETRACT FROM THE FACT OF THE ORGANIZATION'S EXISTENCE, NOR WOULD IT VIOLATE ANY PROVISION OF THE LABOUR RELATIONS ACT. THE APPLICANT NEXT ARGUED THAT, SINCE THE CONSTITUTION PROVIDED FOR THE PLACING OF BALLOT BOXES TO BE USED IN CONNECTION WITH ELECTIONS HELD BY THE RESPONDENT IN THE PLANT OR THE FOREMAN'S OFFICE, THERE WAS PARTICIPATION BY THE COMPANY IN THE ADMINISTRATION OF THE UNION. THERE WAS, HOWEVER, NO EVIDENCE THAT SUCH PROVISIONS HAD BEEN AGREED TO BY THE INTERVENER COMPANY OR THAT SUCH A PROCEDURE HAD EVER IN FACT BEEN FOLLOWED.

3. AS TO THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER, THE APPLICANT ARGUED THAT THE PROVISION IN THE COLLECTIVE AGREEMENT THAT THERE SHOULD BE NO COMPENSATION PAID TO EMPLOYEES WHO WERE REINSTATED AFTER BEING DISCHARGED WAS A VIOLATION OF SECTION 34 OF THE ACT WHICH PROVIDES FOR FINAL SETTLEMENT BY ARBITRATION OF MATTERS RELATING TO THE INTERPRETATION, APPLICATION, ADMINISTRATION OR ALLEGED VIOLATION OF A COLLECTIVE AGREEMENT. THE PROVISION IN QUESTION, HOWEVER, WHILE UNUSUAL AND PERHAPS AGAINST THE INTERESTS OF EMPLOYEES, REPRESENTS THE NEGOTIATED AGREEMENT OF THE PARTIES. WHILE IT DEALS WITH THE SUBJECT MATTER OF POSSIBLE ARBITRATION PROCEEDINGS, IT DOES NOT INVOLVE ANY VIOLATION OF SECTION 34 OF THE ACT.

4. NONE OF THE FOREGOING MATTERS IS OF ITSELF DECISIVE AS TO THE STATUS OF THE RESPONDENT AS A TRADE UNION OR AS TO ITS ENTITLEMENT TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO. THE EVIDENCE, HOWEVER, ALSO DISCLOSES THAT FOLLOWING THE ORGANIZATION OF THE RESPONDENT, BUT BEFORE THE SIGNING OF THE COLLECTIVE AGREEMENT, THE INTERVENER ACCEPTED AUTHORIZATION FROM ITS EMPLOYEES TO CHECK-OFF DUES FROM THEIR WAGES AND REMIT THEM TO THE RESPONDENT. THE COLLECTIVE AGREEMENT MAKES NO PROVISION FOR THE CHECK-OFF UNION DUES, BUT THE INTERVENER COMPANY HAS CONTINUED TO CHECK-OFF UNION DUES EACH MONTH.

IN OUR VIEW, THE PARTICIPATION OF THE COMPANY IN A "UNION SECURITY" MEASURE SUCH AS THIS WHERE IT DOES NOT COME WITHIN THE PROTECTION OF SECTION 35 AS A PROVISION PERMISSIBLE IN A COLLECTIVE AGREEMENT CONSTITUTES THE CONTRIBUTION OF SUPPORT TO THE TRADE UNION. IN SUCH A CASE, BY VIRTUE OF THE PROVISIONS OF SECTION 36 OF THE ACT, THE AGREEMENT MUST BE DEEMED NOT TO BE A COLLECTIVE AGREEMENT FOR THE PURPOSES OF THE ACT. IT MAY ALSO BE NOTED IN THIS CONNECTION THAT THE ORGANIZATIONAL AND OTHER MEETINGS OF THE RESPONDENT HAVE BEEN HELD ON COMPANY PREMISES AND WITH THE COMPANY'S CONSENT. THERE IS NO EVIDENCE, HOWEVER, THAT THE COMPANY WAS AWARE OF THE PURPOSE OF THESE MEETINGS.

5. THE BOARD'S FINDING THAT THE INTERVENER COMPANY HAS CONTRIBUTED SUPPORT TO THE RESPONDENT UNION REQUIRES US TO CONCLUDE THAT THE AGREEMENT IN QUESTION IS NOT A COLLECTIVE AGREEMENT. FURTHER, IF THE RESPONDENT WERE TO APPLY FOR CERTIFICATION IT COULD NOT BE CERTIFIED BECAUSE SECTION 10 OF THE ACT PROHIBITS THE BOARD FROM CERTIFYING A TRADE UNION IF AN EMPLOYER HAS CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO IT. THE RESPONDENT COULD NOT, THEREFORE, ENTER INTO ANY VALID COLLECTIVE AGREEMENT WITH THE INTERVENER AND IT FOLLOWS THAT IT WAS NOT, AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO, ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT.

6. IN VIEW OF THE DISPOSITION WHICH THE BOARD MAKES OF THIS CASE, IT IS NOT NECESSARY TO MAKE ANY DETERMINATION AS TO THE STATUS OF THE RESPONDENT AS A TRADE UNION.

7. THE BOARD DECLARES THAT THE RESPONDENT WAS NOT, AT THE TIME THE COLLECTIVE AGREEMENT REFERRED TO IN PARAGRAPH 1 WAS ENTERED INTO, ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT DESCRIBED THEREIN.

11609-65-R: EMPLOYEES OF THE ROYAL OAK HOTEL (APPLICANTS) V. HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, AFL.CIO.CLC AND ITS DESIGNATED LOCAL UNION (RESPONDENT)

(RE: ROYAL OAK HOTEL).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDERMOTT.

APPEARANCES AT HEARING: B. W. BINNING, GEORGE WOOD AND EDWARD ALBERT WITTLA FOR THE APPLICANTS, AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: (MAY 4, 1966)

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2. THIS IS AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS, MADE THE 31ST OF MARCH, 1966. THE FOLLOWING ARE THE FACTS.

3. A COLLECTIVE AGREEMENT MADE BETWEEN THE RESPONDENT AND THE ROYAL OAK HOTEL CONTAINS THE FOLLOWING CLAUSE WITH RESPECT TO TERMINATION:

THIS AGREEMENT SHALL BECOME EFFECTIVE ON THE 15TH DAY OF MARCH, 1965 AND SHALL REMAIN IN EFFECT UNTIL THE 14TH DAY OF MARCH, 1966 AND SHALL AUTOMATICALLY BE RENEWED THEREAFTER FOR SUCCESSIVE PERIODS OF TWELVE (12) MONTHS UNLESS EITHER PARTY REQUESTS THE NEGOTIATION OF A NEW AGREEMENT BY GIVING WRITTEN NOTICE TO THE OTHER PARTY NOT MORE THAN SIXTY (60) CALENDAR DAYS PRIOR TO THE 14TH DAY OF MARCH 1966 OR SUBSEQUENT YEARS ENDING THE 14TH DAY OF MARCH.

4. ON FEBRUARY 22ND, 1966, THE RESPONDENT SERVED NOTICE ON THE ROYAL OAK HOTEL OF ITS DESIRE TO BARGAIN FOR A RENEWAL OF THE COLLECTIVE AGREEMENT WITH AMENDMENTS.

5. ON MARCH 30TH, 1966, THE RESPONDENT SUBMITTED TO THE MINISTER OF LABOUR A REQUEST FOR CONCILIATION SERVICES. NO CONCILIATION OFFICER HAD BEEN APPOINTED AT THE TIME THIS APPLICATION FOR TERMINATION WAS MADE.

6. ON THE BASIS OF THE ABOVE FACTS AND HAVING REGARD TO THE PROVISIONS OF SECTION 43 (2) (A) AND SECTION 46 (2) OF THE ACT, THE BOARD FINDS THE APPLICATION FOR TERMINATION OF BARGAINING RIGHTS IS TIMELY.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF ROYAL OAK HOTEL IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.

8. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF EMPLOYEES OF ROYAL OAK HOTEL. THOSE ELIGIBLE TO VOTE ARE ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, BARBOYS AND IMPROVERS EMPLOYED BY ROYAL OAK HOTEL AT ITS ROYAL OAK HOTEL AT OAKVILLE, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND OFFICE STAFF, ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

. . .

11610-66-R: BARRIE TANNING, LIMITED (APPLICANT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTOR)

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
H. F. IRWIN AND D. McDERMOTT.

APPEARANCES AT HEARING: D. J. D. SIMS, A. B. COOK AND RAY BETTS FOR THE APPLICANT, WM. WALKER FOR THE RESPONDENT, AND NO ONE APPEARING FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (MAY 18, 1966)

1. THIS IS AN APPLICATION UNDER SECTION 45 OF THE ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT HERETOFORE REPRESENTED BY IT.
2. THE LAST COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT WAS MADE ON JUNE 1ST, 1959. THE AGREEMENT COVERED A TERM OF ONE YEAR AND CONTAINED AN AUTOMATIC RENEWAL CLAUSE. WHILE IT MAY BE THAT AN AUTOMATIC RENEWAL CLAUSE WILL PRESERVE A COLLECTIVE AGREEMENT IN A STATE OF SUSPENDED ANIMATION IN PERPETUITY, AN AGREEMENT WHICH IS PERMITTED TO RENEW ITSELF FROM YEAR TO YEAR WITHOUT ANY ATTEMPT BEING MADE AT IMPROVEMENT, PARTICULARLY DURING TIMES OF GENERAL BETTERMENT OF WAGES AND WORKING CONDITIONS, CAN BECOME BY ITS STAGNANCY, EVIDENCE OF ABANDONMENT OF THE VERY BARGAINING RIGHTS UPON WHICH IT WAS ORIGINALLY BASED. THIS IS MORE PARTICULARLY SO WHERE THE PERIOD OF INACTIVITY HAS CONSUMED SOME SIX YEARS.
3. THE AGREEMENT ALSO EMBODIED A COMPULSORY CHECK-OFF OF UNION DUES. IT WAS ESTABLISHED THAT NO DUES HAVE BEEN DEDUCTED UNDER THIS CLAUSE SINCE MAY 31ST, 1960, AT WHICH TIME THE PLANT WAS TAKEN OVER BY THE EMPLOYEES AS OWNERS, AND THAT NO DEMAND OR PROTEST WITH RESPECT THERETO HAS BEEN MADE IN THE INTERIM. IT IS ALSO CLEAR THAT THE RESPONDENT MADE NO ATTEMPT TO ADMINISTER ANY OF THE OTHER PROVISIONS OF THE AGREEMENT FROM MAY 31ST, 1960, UNTIL MARCH 18TH, 1966, AT WHICH TIME IT CONTACTED THE COMPANY BY TELEPHONE WITH RESPECT TO THE DISMISSAL OF ONE YEO. A FURTHER TELEPHONE CONVERSATION TOOK PLACE ON MARCH 23RD, 1966, ON THE SAME SUBJECT BUT DURING WHICH SOME MENTION WAS ALSO MADE OF THE POSSIBILITY OF RENEWING THE COLLECTIVE AGREEMENT.
4. THE ONLY APPARENT OUTCOME OF THE ABOVE ENCOUNTERS WAS THE SUBSEQUENT FILING OF THIS APPLICATION BY THE APPLICANT AND THE DELIVERY TO THE APPLICANT BY THE RESPONDENT OF A NOTICE OF DESIRE TO BARGAIN FOR A RENEWAL OF THE AGREEMENT WITH MODIFICATIONS. THIS NOTICE IS DATED APRIL 1, 1966, THE SAME DATE AS THAT OF THE APPLICATION HEREIN.
5. IN THE OPINION OF THE BOARD, THE ACTION OF THE UNION ON BEHALF OF YEO AND IN GIVING THE NOTICE OF APRIL 1ST, 1961, CONSTITUTES AN INEFFECTIVE UNILATERAL ATTEMPT TO RESTORE A BARGAINING SITUATION LONG SINCE LOST THROUGH THE PASSAGE OF YEARS DURING WHICH NO ATTEMPT WAS MADE TO ASSERT ANY RIGHTS WHATSOEVER RELATING TO THE EXISTENCE OF A BARGAINING RELATIONSHIP, ALTHOUGH A CONTINUING OPPORTUNITY TO DO SO EXISTED THROUGHOUT.
6. ON THE BASIS OF ALL OF THE FOREGOING, THE BOARD FINDS THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS AND ACCORDINGLY NO LONGER REPRESENTS ANY OF THE EMPLOYEES IN THE BARGAINING UNIT HERETOFORE REPRESENTED BY IT.
7. IN THE LIGHT OF THE FINDING OF ABANDONMENT SET OUT IN PARAGRAPH 6 ABOVE, IT IS UNNECESSARY FOR THE BOARD TO DEAL WITH THE MERITS OF THE APPLICATION UNDER SECTION 45 OF THE ACT.

8. CERTAIN DOCUMENTS WERE OFFERED AS EVIDENCE BY THE RESPONDENT AND RECEIVED BY THE BOARD WITH RESERVATIONS AS TO THEIR ADMISSIBILITY AND RELEVANCE. ASSUMING, BUT WITHOUT SO FINDING, THAT THESE DOCUMENTS WERE ADMISSIBLE, THE BOARD FINDS THAT THEY WOULD SERVE ONLY TO CONFIRM ITS DECISION SET OUT ABOVE.

INDEXED ENDORSEMENT - SECTION 65

11228-65-U: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS
(COMPLAINANT) v. CANADIAN CONTROLLERS LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND F. W. MURRAY.

APPEARANCES AT HEARING: MARTIN LEVINSON, ALEX WALKER AND DANIEL DEAN FOR
THE COMPLAINANT, AND NORMAN L. MATHEWS, Q.C., B. W. BINNING AND H. C. DRAPER
FOR THE RESPONDENT.

DECISION OF J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND
BOARD MEMBER E. BOYER: (MAY 4, 1966)

1. THIS IS A COMPLAINT FOR RELIEF PURSUANT TO SECTION 65 OF THE LABOUR
RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE ACTION OF THE RESPONDENT
COMPANY IN SUSPENDING THE AGGRIEVED PERSONS FROM EMPLOYMENT ON NOVEMBER 10TH,
1965, CONSTITUTED A VIOLATION OF SECTIONS 48, 50 (A), (B) AND (C), 57 AND
59A (1) (A), (B), (C) AND (D) OF THE LABOUR RELATIONS ACT.

2. THE ACTION TAKEN BY THE RESPONDENT COMPANY WITH RESPECT TO THE PERSON
AGGRIEVED WAS SOUGHT TO BE JUSTIFIED BY THE COMPANY ON THE GROUND THAT THE
AGGRIEVED PERSONS HAD ENGAGED IN SOLICITATION ON BEHALF OF THE COMPLAINANT
TRADE UNION ON COMPANY PREMISES DURING WORKING HOURS. THE CONDUCT WHICH THE
COMPANY REGARDED AS SOLICITATION WAS THE WEARING OF CERTAIN UNION BUTTONS.
THE BOARD MUST HERE DETERMINE FIRST, WHETHER THE CONDUCT OF THE AGGRIEVED
PERSONS DID IN FACT CONSTITUTE SOLICITATION, AND SECOND, IF THIS WAS NOT THE
CASE, WHETHER THE ACTION TAKEN BY THE COMPANY CONSTITUTED A VIOLATION OF ANY
OF THE PROVISIONS OF THE LABOUR RELATIONS ACT.

3. DETERMINATION OF THE FIRST QUESTION REQUIRES CONSIDERATION OF AN
EMPLOYER'S POWERS WITH RESPECT TO THE MAKING OF RULES GOVERNING THE CONDUCT
OF EMPLOYEES ON COMPANY TIME. IN THE UNITED STATES THE NATIONAL LABOUR
RELATIONS BOARD HAS ENUNCIATED A PRINCIPLE WHICH, IN OUR VIEW, APPLIES AS
WELL UNDER THE LEGISLATION IN THIS JURISDICTION. THE NATIONAL LABOUR
RELATIONS BOARD IN N.L.R.B. v. PEYTON PACKING CO. INC., (1943) 49 N.L.R.B.
843, STATED:

- - THE ACT, OF COURSE, DOES NOT PREVENT AN
EMPLOYER FROM MAKING AND ENFORCING REASONABLE
RULES COVERING THE CONDUCT OF EMPLOYEES ON
COMPANY TIME. WORKING TIME IS FOR WORK. IT IS
THEREFORE WITHIN THE PROVINCE OF AN EMPLOYER TO

PROMULGATE AND ENFORCE A RULE PROHIBITING UNION SOLICITATION DURING WORKING HOURS. SUCH A RULE MUST BE PRESUMED TO BE VALID IN THE ABSENCE OF EVIDENCE THAT IT WAS ADOPTED FOR A DISCRIMINATORY PURPOSE.

THIS PASSAGE WAS QUOTED WITH APPROVAL BY THE SUPREME COURT OF THE UNITED STATES IN REPUBLIC AVIATION CORPORATION V. N.L.R.B., 324 U.S. 793, 803.

4. IN ONTARIO, SECTION 53 OF THE LABOUR RELATIONS ACT DEALS WITH THE MATTER OF SOLICITATION WITH RESPECT TO UNION MEMBERSHIP DURING WORKING HOURS. THE EFFECT OF THE SECTION IS TO MAKE IT CLEAR THAT SUCH ACTIVITY IS IN NO WAY PROTECTED BY THE ACT:

53. NOTHING IN THIS ACT AUTHORIZES ANY PERSON TO ATTEMPT AT THE PLACE AT WHICH AN EMPLOYEE WORKS TO PERSUADE HIM DURING HIS WORKING HOURS TO BECOME OR REFRAIN FROM BECOMING OR CONTINUING TO BE A MEMBER OF A TRADE UNION.

5. IF THE CONDUCT OF THE PERSONS AGGRIEVED IN THE INSTANT CASE COMES WITHIN THE SCOPE OF SUCH PROPERLY PROHIBITED CONDUCT, THEN THIS BOARD CANNOT INTERFERE WITH THE SUSPENSION FROM EMPLOYMENT IMPOSED ON THEM BY THE RESPONDENT, THERE BEING NO EVIDENCE TO SUGGEST THAT THE PERSONS AGGRIEVED WERE SINGLED OUT FROM OTHER EMPLOYEES WHO HAD ENGAGED IN SIMILAR CONDUCT. IF, ON THE OTHER HAND, IT IS DETERMINED THAT THE CONDUCT OF THE PERSONS AGGRIEVED DOES NOT COME WITHIN THE SCOPE OF SECTION 53, THEN THE QUESTION ARISES WHETHER THEIR SUSPENSION FROM EMPLOYMENT WAS IN VIOLATION OF SOME PROVISION OF THE LABOUR RELATIONS ACT.

6. IN THE ROSCO METAL PRODUCTS LTD. CASE, (1964) C.L.S. 76-991; 64 C.L.L.C. 916,303, THE BOARD DEALT WITH THE WEARING OF UNION BUTTONS DURING THE PERIOD IMMEDIATELY BEFORE THE TAKING OF A REPRESENTATION VOTE. THERE, CERTAIN EMPLOYEES WORE YELLOW BUTTONS, 1 3/4 INCHES IN DIAMETER, ON WHICH APPEARED IN BLOCK LETTERS THE WORDS "VOTE STEELWORKERS C.L.C.". THE RESPONDENT ORDERED THE EMPLOYEES IN QUESTION TO REMOVE THE BUTTONS AND SUSPENDED THOSE WHO FAILED TO DO SO. THE COMPLAINANT UNION THEN FILED AN APPLICATION UNDER SECTION 65 OF THE ACT, ALLEGING THAT THE RESPONDENT HAD INTERFERED WITH THE RIGHTS OF THE EMPLOYEES. AT THE HEARING, THE RESPONDENT CONTENDED THAT THE WEARING OF THE BUTTONS AMOUNTED TO A CONTRAVENTION OF SECTION 53 OF THE ACT. THE MAJORITY OF THE BOARD STATED THAT SECTION 53 DEALS ONLY WITH PERSUASION RELATING TO UNION MEMBERSHIP AND DOES NOT REFER TO ELECTIONEERING OR PROPAGANDA. THE MAJORITY FOUND THAT THE WEARING OF THE "VOTE BUTTON" WAS NOT AN ATTEMPT TO PERSUADE ANY EMPLOYEE TO BECOME A MEMBER OF A TRADE UNION, BUT WAS RATHER A LAWFUL ELECTIONEERING ACTIVITY.

7. THE INSTANT CASE, HOWEVER, ARISES IN THE CONTEXT, NOT OF A REPRESENTATION VOTE, BUT OF AN ORGANIZATIONAL CAMPAIGN. AT THE TIME IN

QUESTION AN APPLICATION FOR CERTIFICATION HAD BEEN MADE TO THE BOARD BY THE COMPLAINANT TRADE UNION, AND THE REGISTRAR HAD, PURSUANT TO THE BOARD'S RULES OF PROCEDURE, FIXED A TERMINAL DATE FOR THE APPLICATION. IT WAS OPEN TO THE UNION TO SUBMIT EVIDENCE OF MEMBERSHIP WITH RESPECT TO EMPLOYEES OF THE RESPONDENT BY THE TERMINAL DATE. IT WAS LIKEWISE OPEN TO ANY EMPLOYEE TO MAKE OBJECTION TO THE APPLICATION BY THAT DATE. THE EVIDENCE ESTABLISHES THAT THE WEARING OF UNION BUTTONS BY CERTAIN EMPLOYEES, INCLUDING THE AGGRIEVED PERSONS, ONLY OCCURRED ON THE TWO DAYS PRIOR TO THE TERMINAL DATE. THERE IS SOME EVIDENCE THAT CERTAIN OF THE AGGRIEVED PERSONS HAD ENGAGED IN DIRECT SOLICITATION OF UNION MEMBERSHIP AMONGST OTHER EMPLOYEES DURING WORKING HOURS (ALTHOUGH SUCH EVIDENCE IS, AT LEAST IN PART CONTRADICTED BY OTHER EVIDENCE). SUCH CONDUCT, IF ESTABLISHED, IS CLEARLY NOT PROTECTED BY THE ACT, AS THE BOARD MADE CLEAR IN THE RALPH MILROD METAL PRODUCTS LTD. CASE, (1964), C.L.S. 76-1016; 64 C.L.L.C. ¶16,007. IT MUST BE REMEMBERED, HOWEVER, THAT IN THE INSTANT CASE THE AGGRIEVED PERSONS WERE NOT SUSPENDED FOR ENGAGING IN DIRECT SOLICITATION OF THIS SORT.

8. THE EVIDENCE ESTABLISHES THAT, AT THE MATERIAL TIMES, THAT IS, IN THE PERIOD JUST BEFORE THE TERMINAL DATE, A "PETITION" IN OPPOSITION TO THE APPLICATION FOR CERTIFICATION WAS BEING CIRCULATED ON THE COMPANY'S PREMISES AND DURING WORKING HOURS. THE AGGRIEVED PERSONS TESTIFIED THAT THEY WORE THE UNION BUTTONS IN ORDER TO AVOID BEING PESTERED BY PERSONS CIRCULATING SUCH A PETITION. ANOTHER REASON, OF COURSE, WAS THEIR DESIRE TO SHOW WHERE THEY STOOD AND GENERALLY TO STRENGTHEN PRO-UNION SENTIMENT IN THE PLANT. THE QUESTION TO BE DECIDED IS WHETHER THE WEARING OF UNION BUTTONS FOR SUCH A PURPOSE COULD BE SAID TO CONSTITUTE SOLICITATION AND BE PROPERLY FORBIDDEN, AND IN PARTICULAR WHETHER THIS IS SO IN THE CIRCUMSTANCES DISCLOSED.

9. THE BUTTONS WHICH WERE WORN BY THE AGGRIEVED PERSONS AND CERTAIN OTHER EMPLOYEES WERE 1 1/2 INCHES IN DIAMETER, BLUE IN COLOUR, BEARING A LARGE LETTER "M" IN WHITE AND WITH THE WORD "MACHINISTS" SUPERIMPOSED IN RED, IN CHARACTERS 1/4 INCH HIGH. THESE BUTTONS, OF PLAIN DESIGN AND NOT GARISH IN ANY SENSE, WHILE PERHAPS OUT OF PLACE IN CERTAIN OFFICES OR OTHER SORTS OF WORK AREAS WOULD NOT ATTRACT ATTENTION IN AN INDUSTRIAL PLANT, EXCEPT OF COURSE WHERE PARTICULAR CIRCUMSTANCES - SUCH AS A UNION'S ORGANIZING CAMPAIGN - WOULD LEND THEM SIGNIFICANCE. IT WAS NOT SUGGESTED THAT THE WEARING OF THE BUTTONS CAUSED ANY DISRUPTION OR INTERFERENCE WITH PRODUCTION IN THE RESPONDENT'S PLANT. IN THIS REGARD, REFERENCE MAY BE HAD TO WHAT WAS SAID IN THE ROSCO CASE, SUPRA:

WHILE THERE WAS EVIDENCE OF CONCERN AMONG THE EMPLOYEES, THERE WAS NO EVIDENCE ADDUCED AT THE HEARING OF ANY DISTURBANCE, VIOLENCE, INTERFERENCE WITH THE QUALITY OR QUANTITY OF PRODUCTION, INTERFERENCE WITH THE RIGHTS OF OTHERS OR THAT THE BUTTONS CONSTITUTE A SAFETY HAZARD OR THAT THE RESPONDENT'S RELATIONSHIP WITH ITS CUSTOMERS OR SUPPLIERS WAS ADVERSELY AFFECTED AS A RESULT OF THE WEARING OF THE VOTE BUTTONS.

THE INSTANT CASE DOES NOT COME WITHIN ANY OF THE CLASSES OF CASES CONTEMPLATED BY THAT STATEMENT.

10. THE DETERMINATION OF THE QUESTION WHETHER THE CONDUCT OF THE AGGRIEVED PERSONS CONSTITUTED SOLICITATION MUST BE MADE HAVING REGARD TO ALL OF THE CIRCUMSTANCES SURROUNDING THAT CONDUCT. IN THE CASE OF THE WEARING OF BUTTONS OR EMBLEMS, REGARD MUST BE HAD NOT ONLY TO THE EMBLEM ITSELF BUT ALSO TO THE PLACE AND MANNER IN WHICH IT IS WORN. IN OUR VIEW, THE WEARING OF BUTTONS SUCH AS THOSE WE HAVE DESCRIBED IN INDUSTRIAL PREMISES SUCH AS THOSE OF THE RESPONDENT, DOES NOT, WITHOUT MORE, CONSTITUTE SOLICITATION, OR AN ATTEMPT TO PERSUADE ANY PERSON TO BECOME A MEMBER OF A TRADE UNION. IT IS ON THIS GROUND, HOWEVER, THAT THE PROHIBITION OF THE WEARING OF THE BUTTONS IS SOUGHT TO BE JUSTIFIED. WHILE, IN SOME CIRCUMSTANCES, THE WEARING OF BUTTONS COULD FORM AN INTEGRAL PART OF A CAMPAIGN OF SOLICITATION AND THUS PROPERLY BE FORBIDDEN, OUR CONCLUSION, ON THE EVIDENCE BEFORE US, IS THAT THIS WAS NOT SUCH A CASE. THE BUTTONS WORN IN THE INSTANT CASE SERVED ONLY TO IDENTIFY THE LOYALTY OF THE WEARERS IN THE SAME WAY, FOR INSTANCE, AS DOES THE WEARING OF A POPPY OF REMEMBRANCE DAY. THE WEARING OF THE POPPY IN SUCH A CASE IS CLEARLY DISTINGUISHABLE FROM THE ACTUAL SOLICITING OF CONTRIBUTIONS TO A VETERAN'S FUND, EVEN THOUGH IT CARRIES THE IMPLICIT AFFIRMATION BY THE WEARER THAT IT IS A GOOD THING TO MAKE SUCH CONTRIBUTIONS.

11. FOR ALL THE FOREGOING REASONS, THE BOARD FINDS THAT THE WEARING OF THE UNION BUTTONS WHICH HAVE BEEN DESCRIBED, DID NOT CONSTITUTE SOLICITATION AND WAS NOT PROPERLY PROHIBITED ON THAT GROUND. IT MUST NOW BE DETERMINED WHETHER THE ACTION TAKEN BY THE COMPANY CONSTITUTED A VIOLATION OF ANY OF THE PROVISIONS OF THE LABOUR RELATIONS ACT. THE JUSTIFICATION OFFERED BY THE COMPANY BEING REJECTED, IT REMAINS ONLY THAT THE COMPANY SUSPENDED THOSE PERSONS WHO, BEING MEMBERS OF THE TRADE UNION, WORE THE BUTTONS, WHICH HAVE BEEN DESCRIBED, ON THE DAY IN QUESTION. THIS IS NOT A CASE OF THE APPLICATION BY AN EMPLOYER OF A GENERAL RULE WHICH, WHETHER REASONABLE OR OTHERWISE, OFFENDS NONE OF THE PROVISIONS OF THE ACT. RATHER IT IS A CASE OF THE IMPOSITION OF AN AD HOC RULE, SPECIFICALLY DIRECTED AGAINST THOSE PERSONS WHO REVEALED THEIR UNION LOYALTIES. HAVING REGARD TO THE CIRCUMSTANCES, THE BOARD FINDS THAT THE ACTION TAKEN BY THE RESPONDENT WITH RESPECT TO THE PERSONS AGGRIEVED CONSTITUTED DISCRIMINATION AGAINST THOSE PERSONS CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT.

12. AT THE BEGINNING OF THE HEARING IN THIS MATTER, THE COMPLAINT WAS WITHDRAWN AS IT AFFECTED JOHN NICOL, TOM NICOL, WM. RAILLEY, JIM HANSBERGER, N. MURRAY, CHARLIE DAHL, NAT FRASER, TAK ODAYASHI AND CARMEN COLANGELO. THE COMPLAINT AS IT AFFECTS THESE PERSONS IS ACCORDINGLY DISMISSED.

13. OUR DETERMINATION OF THE ACTIONS TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:

THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS SUSTAINED BY MARGARET COX, GORD POOL AND WARNER WINSING AS A RESULT OF THEIR SUSPENSION FROM EMPLOYMENT ON

NOVEMBER 10TH, 1965, AND THE AMOUNT SO AGREED UPON WITH RESPECT TO EACH OF THE ABOVE PERSONS SHALL BE PAID OVER BY THE RESPONDENT TO THOSE PERSONS FORTHWITH. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN SEVEN DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF ANY SUCH COMPENSATION PAYABLE WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.

DECISION OF BOARD MEMBER F. W. MURRAY: (MAY 4, 1966)

1. I REGRET THAT I MUST DISSENT FROM THE POSITION OF MY COLLEAGUES FOR THE FOLLOWING REASONS:

2. FIRST AND FOREMOST, I CANNOT CONCLUDE ON A REVIEW OF ALL OF THE EVIDENCE BEFORE THE BOARD THAT IN THE INSTANT CASE, THE WEARING OF THE BUTTONS SERVED ONLY TO IDENTIFY THE LOYALTY OF THE WEARER. WHILE THE EVIDENCE FROM THE AGGRIEVED PERSONS QUITE CLEARLY ALLEGES THAT THEIR MAIN REASON, AND IN SOME CASES, SOLE REASON, FOR WEARING THE BUTTON WAS TO AVOID BEING PESTERED BY THOSE SEEKING THEIR SUPPORT ON A PETITION, I CANNOT CONCLUDE FROM ALL OF THE EVIDENCE, THAT THIS WAS THEIR SOLE REASON. THE BOARD IS BOUND TO CONSIDER THAT THE SOURCE OF SUCH EVIDENCE IS, AFTER ALL, EXTREMELY SELF-SERVING, TO SAY THE LEAST. MOREOVER, SEVERAL OF THE AGGRIEVED PERSONS, INCLUDING WARNER WINSING CLEARLY STATED, UNDER CROSS-EXAMINATION, THAT ONE OF THE REASONS HE WORE THE BUTTON WAS TO SHOW WHAT SIDE HE WAS ON, AND WHERE HE STOOD IN THE HOPE THAT OTHERS WOULD FOLLOW HIS EXAMPLE.

3. MOREOVER, IT IS IMPORTANT TO NOTE THAT DESPITE RATHER PROTRACTED EXCHANGES BETWEEN THE AGGRIEVED PERSONS AND THEIR FOREMAN WHEN THEY WERE ASKED TO TAKE DOWN THE BUTTONS, NONE OF THEM, WHILE DISCUSSING AT LENGTH WITH THE SUPERVISOR THE FACT THAT THE BUTTONS WERE, AFTER ALL, NOT DOING ANY HARM, AT LEAST FROM A SAFETY STANDPOINT, OFFERED THE SUGGESTION THAT THEY WANTED TO WEAR THE BUTTONS IN ORDER TO AVOID "BEING PESTERED" BY THE INTERVENERS WHO WERE ALLEGEDLY CIRCULATING AROUND THE PLANT SEEKING THEIR SUPPORT.

4. MOREOVER, MR. WALKER, THE BUSINESS REPRESENTATIVE OF THE UNION, TESTIFIED THAT THE PURPOSE OF PURCHASING AND DISTRIBUTING THESE AND SIMILAR BUTTONS WAS FOR PROPAGANDA USE. IT IS INDEED STRETCHING THE IMAGINATION TO SUGGEST THAT THESE BUTTONS WERE, IN THE INSTANT CASE, PURCHASED AND DISTRIBUTED MERELY SO AS TO AVOID THE WEARER BEING PESTERED, OR INDEED MERELY TO IDENTIFY THE LOYALTY OF THE WEARER.

5. MOREOVER, IN MY OPINION, IT IS A FALSE ANALOGY TO COMPARE THE WEARING OF A LARGE BUTTON NEAR THE COMPLETION OF A UNION ORGANIZING CAMPAIGN TO THAT OF WEARING A POPPY ON REMEMBRANCE DAY. THIS CAN ONLY SERVE TO REDUCE THE WEIGHT OF THIS BOARD'S DECISIONS. IF A COMPARISON IS TO BE MADE AT ALL, IT MIGHT MORE ACCURATELY BE MADE TO THE WEARING OF SUCH A BUTTON AS IN THE INSTANT CASE, TO THAT OF WEARING THE CAMPAIGN BUTTON OF A CANDIDATE IN A MUNICIPAL, PROVINCIAL OR FEDERAL ELECTION, NEAR THE CONCLUSION OF THE ELECTION CAMPAIGN. OBVIOUSLY, THE INTENT IS SOMETHING MORE THAN MERELY IDENTIFYING LOYALTY, OR MERELY TO AVOID BEING PESTERED BY OPPOSING CANDIDATES.

6. IN MY OPINION, THE COMPANY HAD A RIGHT TO DISCOURAGE, IN THE ONLY MEANS AVAILABLE TO IT, SUCH AN OVERT ACT (NOT USED IN THE SENSE AS UNDER CRIMINAL LAW) AS WEARING A BUTTON IN SUPPORT OF ANY POSITION, IE: ONE THAT WAS DESIGNED FOR PROPAGANDA USE, EITHER TO PERSUADE AN EMPLOYEE DURING "WORKING HOURS TO BECOME OR REFRAIN FROM BECOMING, OR CONTINUING TO BE A MEMBER OF A TRADE UNION" (SECTION 53, ONTARIO LABOUR RELATIONS ACT).

7. THE ISSUE IS SIMPLY, WAS THE WEARING OF THESE BUTTONS IN THESE CIRCUMSTANCES DESIGNED AT LEAST IN PART TO PERSUADE EMPLOYEES TO BECOME OR REFRAIN FROM BECOMING OR CONTINUING TO BE A MEMBER OF A TRADE UNION? I HAVE CONCLUDED, IN VIEW OF ALL OF THE EVIDENCE, THAT THE PURPOSE OF THE WEARING OF THESE BUTTONS AT THAT TIME WAS INTER ALIA FOR THE PURPOSE OF SUCH PERSUASION. HAVING REACHED THIS CONCLUSION, IT FOLLOWS THAT THE TEMPORARY SUSPENSION OF THE PERSONNEL INVOLVED, WAS NOT CONTRARY TO THE ACT, AND ACCORDINGLY, FOR THESE REASONS, I WOULD HAVE DISMISSED THE APPLICATION.

INDEXED ENDORSEMENTS - SECTION 79(2)

11002-65-M: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. HAYES STEEL PRODUCTS LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT HEARING: T. E. ARMSTRONG, M. SOMERVILLE AND J. HOGAN FOR THE APPLICANT AND SHARMAN LEARIE, Q.C., C. D. GOULD AND J. B. McLAUGHLIN FOR THE RESPONDENT.

DECISION OF THE BOARD: (MAY 13, 1966)

1. THIS IS AN APPLICATION FOR RELIEF PURSUANT TO SECTION 79(2) OF THE LABOUR RELATIONS ACT. THE APPLICANT SEEKS THE DECISION OF THE BOARD AS TO WHETHER JOHN DUNNE, THOMAS JACKSON AND J. KEMP ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. MR. J. M. FLANNERY, EXAMINER, WAS APPOINTED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF THE ABOVE NAMED PERSONS, AND ISSUED AN INTERIM REPORT, DATED MARCH 2ND, 1966, DEALING WITH THE DUTIES AND RESPONSIBILITIES OF JOHN DUNNE.

2. IN THE MATTER OF THE APPLICANT'S APPLICATION FOR CERTIFICATION AS BARGAINING AGENT FOR EMPLOYEES OF THE RESPONDENT, BOARD FILE No. 7110-63-R, THE BOARD, IN ITS ENDORSEMENT OF THE RECORD, DATED FEBRUARY 28TH, 1964, FOUND THAT JOHN DUNNE, SCHEDULER-CUSTOMER, DID NOT EXERCISE MANAGERIAL FUNCTIONS AND WAS INCLUDED IN THE BARGAINING UNIT. MR. DUNNE'S DUTIES, HOWEVER, HAVE BEEN CHANGED, AND THESE CHANGED DUTIES WERE THE SUBJECT OF THE INTERIM REPORT OF THE EXAMINER IN THE INSTANT CASE.

3. HAVING CONSIDERED THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF COUNSEL WITH RESPECT THERETO, IT IS OUR OPINION THAT THE MAJOR PART OF THE

DUTIES AND RESPONSIBILITIES OF MR. DUNNE REMAIN AS THEY WERE BEFORE THE CHANGES IN HIS DUTIES WERE PUT INTO EFFECT. AS TO HIS NEW DUTIES AS A BUYER-SCHEDULER, IT IS OUR OPINION THAT THESE DO NOT IMPOSE ON MR. DUNNE THAT DEGREE OF RESPONSIBILITY AND AUTHORITY WHICH WOULD LEAD US TO CONCLUDE THAT HE EXERCISES MANAGERIAL FUNCTIONS.

4. THE BOARD DECLARES THAT JOHN DUNNE DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS INCLUDED IN THE BARGAINING UNIT.

5. THE EXAMINER IS DIRECTED TO CONTINUE HIS INQUIRY IN THIS MATTER AND TO REPORT TO THE BOARD.

11551-65-M: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. MANNESMANN TUBE COMPANY, LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: JOHN H. OSLER, Q.C., BURRIS ORMSBY AND PAUL KRMPOTICH FOR THE APPLICANT, D. CHURCHILL-SMITH AND C. J. DIFEQ FOR THE RESPONDENT.

DECISION OF THE BOARD: (MAY 25, 1966)

1. THE APPLICANT HAS APPLIED, PURSUANT TO THE PROVISIONS OF SECTION 79(2) OF THE LABOUR RELATIONS ACT FOR A DETERMINATION OF THE QUESTION WHETHER CERTAIN PERSONS ARE EMPLOYEES OF THE RESPONDENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

2. IT APPEARS THAT THE REAL ISSUE BETWEEN THE PARTIES IS WHETHER THE PERSONS IN QUESTION ARE INCLUDED IN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES.

3. WHILE THE APPLICANT SEEKS A DECLARATION BY THE BOARD THAT THE PERSONS IN QUESTION ARE EMPLOYEES OF THE RESPONDENT WITHIN THE MEANING OF THE ACT SUCH A DECLARATION IS ONLY A PRELIMINARY ALBEIT NECESSARY STEP PRIOR TO HAVING THE REAL ISSUE RESOLVED PURSUANT TO THE ARBITRATION PROCEDURES DESCRIBED IN THE COLLECTIVE AGREEMENT.

4. THE FACT THAT THE PARTIES CAN NOT AGREE WHETHER THE PERSONS IN QUESTION ARE EMPLOYEES WITHIN THE MEANING OF THE ACT IS CONCLUSIVE OF THE FACT THAT "A QUESTION ARISES AS TO WHETHER A PERSON IS AN EMPLOYEE" AS CONTEMPLATED BY SECTION 79(2) OF THE ACT.

5. SINCE THE QUESTION WHICH AROSE BETWEEN THE PARTIES HAS BEEN REFERRED TO THE BOARD BY THE APPLICANT IN THIS MATTER, THE BOARD HAS JURISDICTION UNDER SECTION 79(2) OF THE ACT TO MAKE A DETERMINATION ON THE QUESTION REFERRED TO IT. (SEE CANADIAN CAR FORT WILLIAM DIVISION HAWKER SIDDELEY CANADA LTD., CASE, BOARD FILE NO. 10386-65-M, DATED JULY 7TH, 1965.)

6. MR. R. A. WOLLAND, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF WALLY DELLO, GUNTHER WEBER, WILLIAM HAMMOND, G. BRINKMAN, R. CARSCADDEN, G. LINDSAY, R. WEDGEBURY, MRS. J. WILLETS, E. THOMAS, M. C. GOSLING AND D. SMYTH.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION

11295-65-R: THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. SKENE CARTAGE COMPANY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND H. F. IRWIN.

DECISION OF J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER D. B. ARCHER. (MAY 11, 1966)

1. THE RESPONDENT BY ITS LETTER OF APRIL 28TH, 1966, REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF APRIL 25TH, 1966, IN THIS MATTER.

2. WHILE IT IS READILY APPARENT THAT THE RESPONDENT PLACES A DIFFERENT INTERPRETATION ON THE EVIDENCE HEARD BY THE BOARD, THE BOARD MADE ITS DECISION DATED APRIL 25TH, 1966, ON ALL THE EVIDENCE HEARD BY IT IN THIS CASE.

3. SINCE THE RESPONDENT HAS NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE TO IT WHICH WAS NOT AVAILABLE TO IT AT THE HEARING IN THIS MATTER, AND SINCE THE BOARD CONSIDERED ALL THE MATTERS RAISED IN THE LETTER FROM THE RESPONDENT PRIOR TO REACHING ITS DECISION OF APRIL 25TH, 1966, THE BOARD DOES NOT, THEREFORE, CONSIDER IT ADVISABLE TO RECONSIDER, REVISE OR REVOKE ITS DECISION DATED APRIL 25TH, 1966, IN THIS CASE.

4. THE REQUEST OF THE RESPONDENT IS ACCORDINGLY DENIED.

DECISION OF BOARD MEMBER H. F. IRWIN. (MAY 11, 1966)

WITHOUT DEROGATING FROM MY DISSENT DATED APRIL 25TH, 1966 IN THIS MATTER, I AGREE WITH THE MAJORITY THAT THERE IS NOTHING BEFORE THE BOARD WHICH WOULD CAUSE IT TO RECONSIDER ITS DECISION OF APRIL 25TH, 1966, IN THIS CASE.

11569-65-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. UNIVERSITY OF WINDSOR (RESPONDENT) v. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

DECISION OF THE BOARD: (MAY 17, 1966)

1. THE RESPONDENT HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF APRIL 14TH, 1966.

2. THE BASIC REASON FOR THE REQUEST APPEARS TO LIE IN THE RESPONDENT'S ALLEGATION THAT THE BOARD HAS DISREGARDED THE RIGHTS AND INTERESTS OF A GROUP OF EMPLOYEES WHO HAD INDICATED A DESIRE TO BE INCLUDED IN THE BARGAINING UNIT SOUGHT, BY DECIDING NOT TO INCLUDE THEM THEREIN UNDER SECTION 6 (2) OF THE ACT.

3. THE RESPONDENT'S ATTENTION IS DIRECTED TO THE FACT THAT SECTION 6 (2) SETS OUT A NUMBER OF CONDITIONS WHICH MUST PREVAIL BEFORE ANY QUESTION OF "RIGHTS" ARISES THEREUNDER. ONE OF THESE PREREQUISITES IS NOT MERELY, AS THE RESPONDENT CONTENDS, THAT THE PERSONS CONCERNED BE COMMONLY ASSOCIATED IN THEIR WORK, BUT RATHER THAT THEY BE PERSONS WHO "ACCORDING TO ESTABLISHED TRADE UNION PRACTICE ARE COMMONLY ASSOCIATED IN THEIR WORK AND BARGAINING WITH SUCH GROUP". IT FOLLOWS THAT EVEN IF THE BOARD ACCEPTS AS FACT THE EVIDENCE "OFFERED" BY THE RESPONDENT AT THE HEARING, BUT NOT ADDUCED, ALTHOUGH THE BOARD DID NOT REFUSE TO HEAR IT, THE BOARD'S DECISION COULD BE NO DIFFERENT.

4. THE BOARD HAS CAREFULLY CONSIDERED THE APPLICATION FOR REVIEW AND SINCE THE APPLICANT DOES NOT ALLEGE THAT IT HAS NEW EVIDENCE WHICH WAS NOT AVAILABLE AT THE HEARING, THE BOARD DOES NOT CONSIDER IT ADVISABLE TO VARY OR REVOKE ITS DECISION OF APRIL 14TH, 1966.

11638-66-R: THE HOTEL & RESTAURANT EMPLOYEE'S AND BARTENDERS INTERNATIONAL UNION, LOCAL 412 A.F. OF L.-C.I.O.,-C.L.C. (APPLICANT) v. THE CANADIAN MOTOR HOTEL (SAULT STE-MARIE) LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

DECISION OF THE BOARD: (MAY 31, 1966)

1. THE APPLICANT AND A GROUP OF EMPLOYEES OF THE RESPONDENT HAVE REQUESTED THAT THE BOARD RECONSIDER ITS DECISION AND THE CERTIFICATE ISSUED IN THIS MATTER BOTH DATED MAY 4TH, 1966, PARTICULARLY AS THEY RELATE TO THE POSITION OF WAITRESSES IN THE EMPLOY OF THE RESPONDENT AT ITS HOTEL.

2. THE APPLICANT APPLIED FOR A BARGAINING UNIT COMPOSED OF ALL EMPLOYEES EMPLOYED IN THE BEVERAGE ROOMS, COCKTAIL LOUNGE AND DINING LOUNGE WAITRESSES. IN THE LIGHT OF THE UNIT APPLIED FOR BY THE APPLICANT, THE BOARD FOLLOWING ITS USUAL POLICY DETERMINED THAT THE APPLICANT WAS ONLY ENTITLED TO CERTIFICATION FOR A CRAFT UNIT COMPOSED OF THOSE EMPLOYEES OF THE RESPONDENT WHOSE THEIR OCCUPATIONAL CLASSIFICATIONS FALL WITHIN THE CRAFT GROUP WHICH THE APPLICANT BY ESTABLISHED PRACTICE IS ENTITLED TO REPRESENT. IN THE INSTANT CASE, THE BOARD FOUND THAT ALL WAITERS, BARTENDERS AND TAPMEN IN THE EMPLOY OF THE RESPONDENT IN THE BEVERAGE ROOMS AND COCKTAIL LOUNGE OF ITS HOTEL CONSTITUTE THE APPROPRIATE CRAFT UNIT.

3. WE WOULD MENTION THAT THE TERM "WAITER" INCLUDES "WAITRESS" (SEE HAROLD GROSS LIMITED CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1965, P. 375). WE WOULD ALSO DRAW PARTICULAR ATTENTION TO THE FACT THAT FOLLOWING ITS USUAL POLICY FOR THIS PARTICULAR CRAFT THE BOARD IN ITS DESCRIPTION CONFINED THE UNIT TO THOSE OCCUPATIONAL CLASSIFICATIONS FALLING WITHIN THE CRAFT WHO ARE EMPLOYED IN THE BEVERAGE ROOMS AND COCKTAIL LOUNGE OF THE RESPONDENT. ACCORDINGLY, IF THE WAITRESSES WITH WHOM WE ARE CONCERNED ON THIS REQUEST WERE EMPLOYED IN THE COCKTAIL LOUNGE (AND DID NOT FALL WITHIN THE EXCLUSION OF PERSONS REGULARLY EMPLOYED IN THAT CAPACITY FOR NOT MORE THAN 24 HOURS PER WEEK) THEY WOULD BE INCLUDED IN THE BARGAINING UNIT AS DESCRIBED IN THE BOARD'S CERTIFICATE.
4. THE INFORMATION PROVIDED AT THE BOARD HEARING ON MAY 3RD, 1966, HOWEVER, WAS THAT THE PRIMARY DUTY OF THE WAITRESSES IN THE EMPLOY OF THE RESPONDENT IS TO SERVE FOOD IN THE DINING ROOM AND AS AN ADDITIONAL ADJUNCT TO THAT RESPONSIBILITY THEY ALSO SERVE ALCOHOLIC BEVERAGES TO PATRONS IN THE DINING ROOM. ASSUMING THE BOARD'S UNDERSTANDING OF THE DUTIES OF THE WAITRESSES IS CORRECT, THE WAITRESSES ON THE BASIS OF ALL PAST PRACTICE DO NOT FALL WITHIN THE CRAFT UNIT FOUND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING BY THE BOARD.
5. IN THEIR LETTER OF MAY 20TH, 1966, THE WAITRESSES APPEAR TO SUGGEST THAT THEY HAVE BEEN DENIED THE RIGHT TO BE REPRESENTED BY THE APPLICANT TRADE UNION. WHILE THE WAITRESSES BY THEMSELVES DO NOT CONSTITUTE AN APPROPRIATE UNIT, INCLUDED WITH OTHER EMPLOYEES OF THE RESPONDENT SUCH AS THE KITCHEN MAID SERVICE AND MAINTENANCE STAFF, THEY MIGHT WELL FORM PART OF A UNIT THAT WOULD BE APPROPRIATE FOR COLLECTIVE BARGAINING. THE APPLICANT, HOWEVER, NEITHER APPLIED FOR NOR DID IT HAVE THE REQUIRED EVIDENCE OF MEMBERSHIP TO BE ENTITLED TO CERTIFICATION OR EVEN THE TAKING OF A REPRESENTATION VOTE IN SUCH A UNIT.
6. THE BOARD ACCORDINGLY SEES NO REASON TO REVISE OR AMEND ITS CERTIFICATE OF MAY 4TH, 1966 ISSUED IN THIS MATTER.

EXCERPTS FROM DECISIONS IN
CONSTRUCTION INDUSTRY CASES

THE FOLLOWING EXCERPTS FROM DECISIONS ISSUED IN CONSTRUCTION INDUSTRY CASES ARE REPORTED FOR THE INFORMATION OF THE PUBLIC.

11650-66-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL UNION 46 ORGANIZING DIVISION (APPLICANT) v. SPACE CONDITION OF CANADA LIMITED (RESPONDENT).

2. AFTER CAREFULLY CONSIDERING THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES WE ARE UNABLE TO FIND ANY SUBSTANTIAL DIFFERENCES BETWEEN THIS CASE AND AUTOMATIC FUELS LIMITED, BOARD FILE NO. 11230-65-R. WE THEREFORE

FIND FURTHER THAT WITH RESPECT TO THE REPAIR AND SERVICE ASPECT OF THE RESPONDENT'S OPERATIONS, IT IS OPERATING A BUSINESS IN THE CONSTRUCTION INDUSTRY WITHIN THE MEANING OF SECTION 1(1)(DA) OF THE LABOUR RELATIONS ACT, AND THAT THE PRESENT APPLICATION IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE SAID ACT.

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN OIL BURNER SERVICE AND INSTALLATION WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT SERVICE MANAGER, PERSONS ABOVE THE RANK OF SERVICE MANAGER AND OFFICE STAFF."

(MAY 5, 1966).

11712-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124 (APPLICANT) v. ROLAND LEFEBVRE LATHING LIMITED (RESPONDENT) v. CANADIAN CONSTRUCTION WORKERS' UNION DIVISION NO. 1, N.C.C.L. (INTERVENER).

7. WHERE AN APPLICANT UNION SEEKS TO DISPLACE AN INCUMBENT UNION AND ON ITS APPLICATION PROPOSES A BARGAINING UNIT WHICH DIFFERS FROM THE BARGAINING UNIT IN THE COLLECTIVE AGREEMENT BETWEEN THE INCUMBENT UNION AND THE EMPLOYER, THE BOARD SETS UP A VOTING CONSTITUENCY IN THE TERMS OF THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT. IF THE APPLICANT UNION WINS THE VOTE THE BOARD, IN DESCRIBING THE BARGAINING UNIT IN THE CERTIFICATE ISSUED TO THE APPLICANT, WILL TAKE INTO CONSIDERATION THE REPRESENTATIONS OF THE PARTIES AS TO HOW THAT UNIT SHOULD BE DESCRIBED. IN OTHER WORDS THE BARGAINING UNIT AS ULTIMATELY SET OUT IN THE BOARD'S CERTIFICATE MAY DIFFER FROM THE VOTING CONSTITUENCY.

(MAY 6, 1966).

STATISTICAL TABLES FOR MAY 1966

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER FILED</u>		
	<u>MAY 1ST 1966</u>	<u>2 MONTHS OF FISCAL YEAR 1966-67</u>	<u>1965-66</u>
I. CERTIFICATION	78	164	191
II. DECLARATION TERMINATING BARGAINING RIGHTS	10	15	13
III. DECLARATION OF SUCCESSOR STATUS	2	2	2
IV. DECLARATION THAT STRIKE UNLAWFUL	1	4	11
V. DECLARATION THAT LOCK-OUT UNLAWFUL	-	-	-
VI. CONSENT TO PROSECUTE	10	27	11
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	14	19	24
VIII. MISCELLANEOUS	<u>4</u>	<u>8</u>	<u>16</u>
TOTAL	<u>119</u>	<u>239</u>	<u>268</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER</u>		
	<u>MAY 1ST 1966</u>	<u>2 MONTHS OF FISCAL YEAR 1966-67</u>	<u>1965-66</u>
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	75	129	212

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE
ONTARIO LABOUR RELATIONS BOARD
BY MAJOR TYPES

		NUMBER DISPOSED OF		
		MAY 1ST 2 MONTHS OF FISCAL YEAR		
		1966	1966-67	1965-66
I.	CERTIFICATION	93	162	183
II.	DECLARATION TERMINATING BARGAINING RIGHTS	4	8	8
III.	DECLARATION OF SUCCESSOR STATUS	2	2	5
IV.	DECLARATION THAT STRIKE UNLAWFUL	1	4	7
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	-	-
VI.	CONSENT TO PROSECUTE	14	18	12
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	13	19	19
VIII.	MISCELLANEOUS	3	8	35
TOTAL		<u>130</u>	<u>221</u>	<u>269</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY TYPE AND DISPOSITION

<u>NUMBER OF APPLICATIONS</u>				<u>NUMBER OF EMPLOYEES*</u>			
<u>MAY</u>	<u>1ST</u>	<u>2 MTHS</u>	<u>FISCAL YR.</u>	<u>MAY</u>	<u>1ST</u>	<u>2 MTHS</u>	<u>FISCAL YR.</u>
<u>1966</u>	<u>1966-67</u>	<u>1965-66</u>		<u>1966</u>	<u>1966-67</u>	<u>1965-66</u>	

I. CERTIFICATION

GRANTED	67	112	146	1694	2619	4979
DISMISSED	16	29	26	489	1389	1955
WITHDRAWN	<u>10</u>	<u>18</u>	<u>11</u>	<u>175</u>	<u>370</u>	<u>1157</u>
TOTAL	<u>93</u>	<u>159</u>	<u>183</u>	<u>2358</u>	<u>4378</u>	<u>8091</u>

II. TERMINATION
OF BARGAINING
RIGHTS

GRANTED	2	5	1	39	251	12
DISMISSED	2	3	6	61	91	151
WITHDRAWN	<u>-</u>	<u>-</u>	<u>1</u>	<u>-</u>	<u>-</u>	<u>30</u>
TOTAL	<u>4</u>	<u>8</u>	<u>8</u>	<u>100</u>	<u>342</u>	<u>193</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY
TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>MAY 1966</u>	<u>1ST 2 MONTHS 1966-67</u>	<u>FISCAL YEAR 1965-66</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	-
	WITHDRAWN	<u>1</u>	<u>4</u>	<u>7</u>
	TOTAL	<u>1</u>	<u>4</u>	<u>7</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	-
	WITHDRAWN	<u>-</u>	<u>-</u>	<u>-</u>
	TOTAL	<u>-</u>	<u>-</u>	<u>-</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	3	3	1
	DISMISSED	-	-	2
	WITHDRAWN	<u>11</u>	<u>15</u>	<u>9</u>
	TOTAL	<u>14</u>	<u>18</u>	<u>12</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED

OF BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>MAY 1ST 2 MONTHS FISCAL YEAR</u>		
	<u>1966</u>	<u>1966-67</u>	<u>1965-66</u>
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	3	4	5
POST-HEARING VOTE	5	8	6
BALLOTS NOT COUNTED	-	-	-
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	1	1	1
POST-HEARING VOTE	7	11	3
BALLOTS NOT COUNTED	-	-	1
TOTAL	<u>16</u>	<u>24</u>	<u>16</u>

* INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF

BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>MAY 1ST 2 MONTHS FISCAL YEAR</u>		
	<u>1966</u>	<u>1966-67</u>	<u>1965-66</u>
*RESPONDENT UNION SUCCESSFUL	-	-	-
RESPONDENT UNION UNSUCCESSFUL	-	3	1
TOTAL	<u>-</u>	<u>3</u>	<u>1</u>

* IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

E, 1966

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Monthly Report



ONTARIO, LABOUR RELATIONS BOARD

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JUNE 1966

BARGAINING AGENTS CERTIFIED DURING JUNE

No Vote Conducted

11413-65-R: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. ONTARIO STEEL PRODUCTS COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CONFIDENTIAL SECRETARY TO THE DIVISION GENERAL MANAGER, NURSE, SALESMEN, EMPLOYEES IN THE PERSONNEL DEPARTMENT, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, STUDENTS EMPLOYED ON A UNIVERSITY CO-OPERATIVE TRAINING PROGRAMME AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (43 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS AND AGREEMENTS OF THE PARTIES).

11573-65-R: LITHOGRAPHERS & PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 247 (APPLICANT) V. RECORD PRINTING AND LITHOGRAPHING Co. (LONDON) LIMITED (RESPONDENT).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

11652-66-R: BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, WINDSOR, ONTARIO (APPLICANT) V. PUBLIC GENERAL HOSPITAL SOCIETY OF CHATHAM (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL IN CHATHAM, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, UNDERGRADUATE DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, CHIEF ENGINEER, OFFICE STAFF, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT WITH THE CANADIAN UNION OF OPERATING ENGINEERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (151 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY AND FOR THE PURPOSES OF THE INSTANT CASE, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS, AND STUDENTS TAKING FORMAL COURSES LEADING TO THEIR CERTIFICATION AS REGISTERED TECHNICIANS OR REGISTERED RADIOLOGICAL TECHNICIANS.

11689-66-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. HAMILTON BAKING COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (17 EMPLOYEES IN THE UNIT).

11699-66-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 141 (APPLICANT) V. E. F. SAGE & SONS (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT AT LONDON." (4 EMPLOYEES IN THE UNIT).

11711-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS (APPLICANT) V. V. D. RIGATO LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS GRAVEL PITS ON OLIVER ROAD IN THE TOWNSHIP OF SHUNIAH AND ON MAPLEWORD ROAD IN THE TOWNSHIP OF GORHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT).

11734-66-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. INDUSTRIAL TANKERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (7 EMPLOYEES IN THE UNIT).

11735-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. OTIS ELEVATOR COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 440 VICTORIA AVENUE NORTH, HAMILTON, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, SECURITY GUARDS, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (653 EMPLOYEES IN THE UNIT).

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE PERSONS CLASSIFIED BY THE RESPONDENT AS TECHNICAL STAFF ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF.

(SEE INDEXED ENDORSEMENT PAGE 183).

11736-66-R: EMPLOYEES' ASSOCIATION OF KEMP PRODUCTS (1966) (APPLICANT) V. KEMP PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT LOCATED AT 1881 HURON STREET LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (50 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES AND TO THE CIRCUMSTANCES OF THIS PARTICULAR CASE).

11737-66-R: LOCAL UNION 773, OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO-CLC (APPLICANT) V. THORNHILL TELEVISION LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

11739-66-R: LOCAL UNION 773 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO-CLC (APPLICANT) V. VESTER'S ENTERPRISES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR EMPLOYED AT McCaffrey's Hi Fi TV, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

11741-66-R: LOCAL UNION 773 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO-CLC (APPLICANT) V. TOWN & COUNTRY ELECTRONICS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

11742-66-R: LOCAL UNION 773 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO-CLC (APPLICANT) V. UPTOWN RADIO & TV LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

11752-66-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. CLUETT, PEABODY & Co. OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN HAMILTON, SAVE AND EXCEPT TRAINING INSTRUCTORS, QUALITY INSPECTORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF." (109 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11760-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. DECOR METAL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MIDLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, CHIEF INSPECTOR, OFFICE AND SALES STAFF, PERSONS EMPLOYED IN THE DRAFTING DEPARTMENT AND THE ENGINEERING DEPARTMENT, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (220 EMPLOYEES IN THE UNIT).

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT QUALITY CONTROL LINE INSPECTORS ARE INCLUDED IN THE BARGAINING UNIT.

11765-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS (APPLICANT) V. THE GRIFFITH MINE, PICKANDS MATHER & CO., MANAGING AGENT (RESPONDENT) V. THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (INTERVENER #1) V. UNITED STEELWORKERS OF AMERICA (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS MINE AT BRUCE LAKE, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND CLERICAL EMPLOYEES, LABORATORY STAFF, EMPLOYEES IN THE ENGINEERING AND GEOLOGICAL DEPARTMENTS, SECURITY GUARDS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT).

INTERVENER #2 CERTIFIED

(APPLICANT WITHDREW ITS APPLICATION).

11768-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. THE DILL MANUFACTURING COMPANY OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (46 EMPLOYEES IN THE UNIT).

11769-66-R: THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS AFL-CIO-CLC (APPLICANT) V. ABITIBI CONTAINERS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND SECURITY GUARDS." (34 EMPLOYEES IN THE UNIT).

11772-66-R: UPHOLSTERERS' INTERNATIONAL UNION OF N.A. (APPLICANT) V. STELLAR FURNITURE & UPHOLSTERY CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

11773-66-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL NO. 204, AFL CIO CLC (APPLICANT) V. CONTINENTAL CASUALTY COMPANY (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS MAINTENANCE DEPARTMENT AT 160 BLOOR STREET EAST, TORONTO, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD FURTHER DECLARED THAT THE BARGAINING UNIT INCLUDES MAINTENANCE MEN, WATCHMEN, NIGHT ELEVATOR OPERATORS AND PARKING LOT ATTENDANTS.

11777-66-R: THE SUDBURY AND DISTRICT GENERAL WORKERS' UNION LOCAL 902 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (APPLICANT) V. NICKEL RANGE HOTEL (SUDBURY) LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, OFFICE AND CLERICAL STAFF, PERSONS EMPLOYED IN THE BEVERAGE ROOM AND COCKTAIL LOUNGE COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (27 EMPLOYEES IN THE UNIT).

A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THOSE EMPLOYEES INCLUDED IN BARGAINING UNIT #1.

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, OFFICE AND CLERICAL STAFF, AND PERSONS EMPLOYED IN THE BEVERAGE ROOM AND COCKTAIL LOUNGE COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (9 EMPLOYEES IN THE UNIT). (DISMISSED).

11781-66-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. HOWARD BIENVENUE INCORPORATED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS WOODS OPERATIONS IN THE TOWNSHIPS OF LAMPLUGH, FRECHEVILLE, HOLLOWAY AND HARKER AND THOSE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND SCALERS." (28 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 188).

11782-66-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. KAMBLY (OF SWITZERLAND) CANADA, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (130 EMPLOYEES IN THE UNIT).

11788-66-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 392 (APPLICANT) V. C. H. BURTON ROOFING AND SHEET METAL LTD. (RESPONDENT).

UNIT: "ALL ROOFERS AND PERSONS REGULARLY ENGAGED AS THEIR HELPERS OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF PETERBOROUGH, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND PERSONS PRIMARILY

ENGAGED IN THE INSTALLATION OF WOOD SHINGLES AND METAL ROOFING." (6 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

11789-66-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. TROUT CREEK LUMBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TROUT CREEK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT).

11797-66-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. NORTON MOTORS (KENORA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KENORA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

11805-66-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. SCEPTRE DREDGING LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11806-66-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. SAUGEE VENEERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HANOVER, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (75 EMPLOYEES IN THE UNIT).

11807-66-R: THE SUDBURY AND DISTRICT GENERAL WORKERS' UNION LOCAL 902 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF RAYSIDE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF RAYSIDE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

11808-66-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS (APPLICANT) V. CAMPBELL MOTORS (OTTAWA) LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, NEW AND USED CAR SALESMEN AND SERVICE SALESMEN." (56 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 188).

11813-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. CHELMSFORD VALLEY DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT CHELMSFORD, SAVE AND EXCEPT THE SECRETARY-TREASURER OF THE BOARD, THE SECRETARY TO THE SECRETARY-TREASURER OF THE BOARD AND THE HEAD SECRETARY IN THE SCHOOL OFFICE." (3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11814-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. BOARD OF EDUCATION OF THE TOWN OF LEASIDE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF SUPERINTENDENT, PROFESSIONAL TEACHING STAFF AND OFFICE STAFF." (33 EMPLOYEES IN THE UNIT).

11815-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 (APPLICANT) v. FRED BARBINI LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

11827-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS - LOCAL 793 (APPLICANT) v. LAKEHEAD SCRAP METAL COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF PORT ARTHUR, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE STAFF AND PERSONS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11828-66-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL - CIO - CLC (APPLICANT) v. DOMCO VINYLs LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (61 EMPLOYEES IN THE UNIT).

11829-66-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1250 (APPLICANT) v. NATIONAL CONSTRUCTION CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF McNAB, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

THE JOB SITE OF THE EMPLOYEES AFFECTED BY THIS APPLICATION IS IN THE TOWNSHIP OF McNAB IN THE COUNTY OF RENFREW. THE BOARD HAS NOT INCLUDED THIS TOWNSHIP IN EITHER THE COUNTY OF RENFREW OR THE COUNTY OF LANARK BECAUSE THERE IS NO UNIFORM PATTERN OF BARGAINING FOR THIS AREA AND FURTHER THE UNION JURISDICTIONS ARE LIKewise NOT UNIFORM. IN THESE CIRCUMSTANCES, THE BOARD IS NOT PREPARED AT THE PRESENT TIME TO MAKE THE DECISION AS TO WHICH AREA THE TOWNSHIP OF McNAB SHOULD BE ASSIGNED.

11832-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 92 (APPLICANT) V. VINCENT & Co. INC. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

11834-66-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 568 (APPLICANT) V. POWER CONTROLS DIVISION (AT HAMILTON) MIDLAND-ROSS OF CANADA, LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS POWER CONTROLS DIVISION AT HAMILTON SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF (10 EMPLOYEES IN THE UNIT).

11847-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (APPLICANT) V. CON-STEEL SETTING COMPANY (RESPONDENT)

UNIT: "ALL RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. (2 EMPLOYEES IN THE UNIT).

11851-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION #2307 (APPLICANT) V. PAUL DAOUST CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF CORNWALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

11855-66-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS - AFL-CIO-CLC (APPLICANT) V. CUSTOM CONTROL PANELS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).

11859-66-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL No. 204, AFL CIO CLC (APPLICANT) V. MONTROW REALTY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE YONGE STREET ARCADE, 74 VICTORIA STREET, TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (24 EMPLOYEES IN THE UNIT).

11863-66-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. DROPE PAVING & CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (10 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 190).

11865-66-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE SUDBURY PUBLIC SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY REGULARLY EMPLOYED FOR 24 HOURS OR LESS PER WEEK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PROFESSIONAL TEACHING STAFF." (32 EMPLOYEES IN THE UNIT).

11866-66-R: BUILDING SERVICE EMPLOYEES' UNION, LOCAL 210 WINDSOR, ONTARIO (APPLICANT) v. ALEXANDRA MARINE & GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL AT GODERICH, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, GRADUATE DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (43 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIO-LOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

11868-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 493 (APPLICANT) v. BOULANGER & TREMBLAY CONSTRUCTION AND SUPPLY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11869-66-R: THE BRICKLAYERS', MASONS AND PLASTERERS' INTERNATIONAL UNION, LOCAL 33 (APPLICANT) v. JANKE CONSTRUCTION (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONE-MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN OWEN SOUND AND MEAFORD AND THE TOWNSHIPS OF KEPPEL, SARAWAK, DERBY, SYDENHAM AND ST. VINCENT IN THE COUNTY OF GREY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

11870-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. CROWLE FITTINGS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PEEL COUNTY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (25 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11875-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1758 (APPLICANT) v. WEXFORD CONCRETE LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF ELIZABETHTOWN IN THE COUNTY OF LEEDS AND IN THE TOWNSHIPS OF AUGUSTA AND EDWARDSBURGH IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

11881-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. DUFFERIN MATERIALS & CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS TORONTO CONSTRUCTION DIVISION IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11882-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. DAHMER STEEL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (137 EMPLOYEES IN THE UNIT).

11893-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) v. DROGE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11897-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL No. 721 (APPLICANT) V. DEMAG INDUSTRIAL EQUIPMENT LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET, ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11904-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. KOPPERS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (58 EMPLOYEES IN THE UNIT).

11909-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. FINLEY W. McLACHLIN LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11910-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. CLARENCE H. GRAHAM BUILDING CONTRACTOR (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GRAY (EXCEPTING THEREFROM THE TOWNSHIPS OF NORMANBY, EGREMONT AND PROTON), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11921-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL No. 721 (APPLICANT) V. EICHLEAY CORP. INTERNATIONAL (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11928-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. JOESUG REALTY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATIONS OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

11688-66-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 414, AFL:CIO:CLC (INTERVENER).

UNIT: "ALL FULL TIME MEAT, PRODUCE, GROCERY AND GENERAL MERCHANDISE MANAGERS AND BOOKKEEPERS EMPLOYED BY THE RESPONDENT IN WINDSOR AND THE SUBURBAN AREA." (39 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE BARGAINING HISTORY OF THE RESPONDENT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	36
NUMBER OF PERSONS WHO CAST BALLOTS	36
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	34
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	2

11715-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. SMITH & STONE LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GEORGETOWN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SECURITY GUARDS, AND TECHNICAL EMPLOYEES." (476 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	449
NUMBER OF PERSONS WHO CAST BALLOTS	444
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	311
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	133

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

11724-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 598 (APPLICANT) V. BEMAC PROTECTIVE COATINGS LIMITED (RESPONDENT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA (LOCAL No. 506)(INTERVENER).

UNIT: "ALL EMPLOYEES IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE STAFF, WATCHMEN AND DRAFTING PERSONNEL." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	12
NUMBER OF PERSONS WHO CAST BALLOTS	12
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	1

11725-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 598 (APPLICANT) V. VULCAN ASPHALT & SUPPLY COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA (LOCAL No. 506), (HOT & COLD MASTIC AND HOT & COLD PLASTIC DIVISION) (INTERVENER).

UNIT: "ALL EMPLOYEES IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE STAFF, WATCHMEN AND DRAFTING PERSONNEL." (12 EMPLOYEES IN THE UNIT).

HAVING REGARD TO THE FACT THAT THIS IS AN APPLICATION UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT, THE BOARD DECLARED THAT EMPLOYEES WHEN WORKING AT THE RESPONDENT'S YARD ARE NOT INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 598	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA (LOCAL No. 506), (HOT & COLD MASTIC AND HOT & COLD PLASTIC DIVISION)	0

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JUNE

No VOTE CONDUCTED

11631-66-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. JOHNSON-KIEWIT SUBWAY CORPORATION (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 182).

11657-66-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ANTHONY DEROSE LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER) (5 EMPLOYEES).

11738-66-R: LOCAL UNION 773 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO-CLC (APPLICANT) V. DUPP'S T.V. AND ELECTRONICS (RESPONDENT). (4 EMPLOYEES).

11740-66-R: LOCAL UNION 773 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO-CLC (APPLICANT) V. GRAY'S RADIO AND TELEVISION SERVICE LTD. (RESPONDENT). (5 EMPLOYEES).

11754-66-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SILVERWOOD DAIRIES LIMITED (RESPONDENT) V. SILVERWOOD'S EMPLOYEE'S ASSOCIATION BRANTFORD ONT. (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS). (43 EMPLOYEES).

11758-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 79 (APPLICANT) V. THE METROPOLITAN TORONTO HOUSING COMPANY LIMITED (RESPONDENT). (11 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 186).

11780-66-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION, AFL. CIO. CLC. (APPLICANT) V. TWEED VENEERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TWEED, SAVE AND EXCEPT FOREMEN, PER ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (35 EMPLOYEES IN THE UNIT).

11812-66-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. PETTAPIECE CARTAGE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (74 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 190).

11886-66-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 1904 (APPLICANT) V. JOS. LEFEBVRE PAINTER & DECORATOR (RESPONDENT). (8 EMPLOYEES).

11911-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS LOCAL UNION, 759 (APPLICANT) V. THE CARTER CONSTRUCTION COMPANY LIMITED (RESPONDENT). (3 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

11728-66-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. CANADA CYCLE AND MOTOR COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

VOTING CONSTITUENCY: "ALL STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT AT ITS WESTON PLANT, SAVE AND EXCEPT A CHIEF ENGINEER ABOVE THE RANK OF SECOND CLASS ENGINEER." (5 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	3
NUMBER OF PERSONS WHO CAST BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	2

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

11256-65-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V. NORTHERN ELECTRIC OFFICE EMPLOYEE ASSOCIATION (INTERVENER #1) V. NORTHERN ELECTRIC EMPLOYEE ASSOCIATION (INTERVENER #2).

VOTING CONSTITUENCY: "ALL HOURLY RATED NON-SUPERVISORY EMPLOYEES EMPLOYED BY THE RESPONDENT IN ITS APPARATUS DIVISION, LONDON WORKS, AT LONDON, SAVE AND EXCEPT SECTION CHIEFS, PERSONS ABOVE THE RANK OF SECTION CHIEF, REGISTERED NURSES, OFFICE STAFF, STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE BOILER ROOM AND SECURITY GUARDS." (1248 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	1276
NUMBER OF PERSONS WHO CAST BALLOTS	1235
NUMBER OF SPOILED BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	597
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF NORTHERN ELECTRIC EMPLOYEE	
ASSOCIATION	635

11330-65-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. PETER GORMAN LIMITED (RESPONDENT) V. EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NEWMARKET, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	5

11644-66-R: WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION LOCAL 145 HAMILTON (APPLICANT) V. LEONS LATHING (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL LATHERS AND LATHERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	8
NUMBER OF PERSONS WHO CAST BALLOTS	8
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	6

11659-66-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. UNION CARBIDE CANADA LIMITED, PLASTIC PRODUCTS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ORANGEVILLE, SAVE AND EXCEPT SHIFT LEADERS, PRODUCTION SCHEDULERS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF." (75 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	68
NUMBER OF PERSONS WHO CAST BALLOTS	64
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	12
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	52

11778-66-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. LORAIN PRODUCTS (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (42 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	41
NUMBER OF PERSONS WHO CAST BALLOTS	41
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	16
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	24

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JUNE

11548-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN JAMIESON MINES LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (31 EMPLOYEES).

11811-66-R: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION LOCAL 261 (APPLICANT) V. CANADA CATERING CO. LTD. (RESPONDENT). (17 EMPLOYEES).

11825-66-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. BATHURST CONTAINERS LIMITED (RESPONDENT). (5 EMPLOYEES).

11833-66-R: LOCAL 80 OF THE UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, CLC (APPLICANT) V. DOMINION TIRE STORES (RESPONDENT). (9 EMPLOYEES).

11842-66-R: AMERICAN NEWSPAPER GUILD AFL-CIO-CLC (APPLICANT) V. THE JOURNAL PUBLISHING COMPANY OF OTTAWA (RESPONDENT). (8 EMPLOYEES).

11843-66-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. C & A TRUCKING LIMITED (RESPONDENT). (7 EMPLOYEES).

11895-66-R: LOCAL UNION 1824, OF THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS AMERICA (APPLICANT) V. STANDARD PAINTING & DECORATING LTD. (RESPONDENT).

11914-66-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 636 (APPLICANT) V. CHUBB-MOSLER AND TAYLOR ALARMS LTD. (RESPONDENT). (14 EMPLOYEES).

11920-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL NO. 721 (APPLICANT) V. EICHLEAY CORP. INTERNATIONAL (RESPONDENT). (2 EMPLOYEES).

11934-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL NO. 721 (APPLICANT) V. CLERK WINDOWS LTD. (RESPONDENT).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING

JUNE

11117-65-R: ALBERT A. HEBERT (APPLICANT) V. THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (RESPONDENT) V. IRVING CHARLES SUPERMARKETS LIMITED (INTERVENER). (67 EMPLOYEES). (GRANTED).

11609-65-R: EMPLOYEES OF THE ROYAL OAK HOTEL (APPLICANTS) V. HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, AFL.CIO.CLC AND ITS DESIGNATED LOCAL UNION (RESPONDENT). (GRANTED).

UNIT: "ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, BARBOYS AND IMPROVERS EMPLOYED BY ROYAL OAK HOTEL AT ITS ROYAL OAK HOTEL AT OAKVILLE, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	6
NUMBER OF BALLOTS CAST	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	2
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	4

11667-66-R: GERARD BELLEMARE (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (RESPONDENT) V. RAMSAY INDUSTRIES LIMITED (INTERVENER). (19 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 192).

11686-66-R: GORDON ROTTEAU, ON HIS OWN BEHALF AND ON THE BEHALF OF THE EMPLOYEES OF CANADIAN BREWERIES LIMITED. (RESEARCH DIVISION), TORONTO, ONTARIO (APPLICANT) V. LOCAL 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL.CIO.CLC. (RESPONDENT) V. CANADIAN BREWERIES LIMITED (RESEARCH DIVISION) (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF CANADIAN BREWERIES LIMITED (RESEARCH DIVISION) EMPLOYED IN THE QUALITY CONTROL DEPARTMENT OF THE COMPANY'S RESEARCH DIVISION IN TORONTO SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE STAFF, CHEMISTS, BACTERIOLOGISTS, AND CAFETERIA HELP." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	13
NUMBER OF PERSONS WHO CAST BALLOTS	13
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	1
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	12

11717-66-R: KARL CRAWFORD CAMERON (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES (LOCAL 831) (RESPONDENT) V. THE CORPORATION OF THE COUNTY OF PEEL (INTERVENER). (GRANTED).

- AND -

11718-66-R: FREDERICK GEORGE WOLLETT (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES (LOCAL 831) (RESPONDENT) V. THE CORPORATION OF THE COUNTY OF PEEL (INTERVENER). (GRANTED).

- AND -

11719-66-R: HOWARD STANLEY BURK (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES (LOCAL 831) (RESPONDENT) V. THE CORPORATION OF THE COUNTY OF PEEL (INTERVENER). (GRANTED).

(THE ABOVE MATTERS ARE CONSOLIDATED).

UNIT: "ALL EMPLOYEES OF THE INTERVENER EMPLOYED AT ITS JAIL IN BRAMPTON, ONTARIO, SAVE AND EXCEPT CHIEF TURNKEY, PERSONS ABOVE THE RANK OF CHIEF TURNKEY, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN AN AVERAGE OF TWENTY-FOUR (24) HOURS PER WEEK." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	11

11749-66-R: NEW SURPASS PETROCHEMICALS LIMITED (APPLICANT) V. CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF NEW SURPASS PETROCHEMICALS LIMITED AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 AND NEW SURPASS PETROCHEMICALS LIMITED." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	12
NUMBER OF PERSONS WHO CAST BALLOTS	12
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	1
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	11

11795-66-R: MR. DAVID TRIPP (APPLICANT) V. GENERAL TRUCK DRIVERS' UNION LOCAL 879 (RESPONDENT). (12 EMPLOYEES). (DISMISSED).

(RE: CARGO TRANSIT,
BURLINGTON, ONTARIO).

11823-66-R: BAY LUMBER LIMITED (APPLICANT) V. LUMBER & SAWMILL WORKERS' UNION LOCAL 2537 (RESPONDENT). (18 EMPLOYEES). (DISMISSED).

11824-66-R: EMPLOYEES BAY LUMBER LIMITED (APPLICANTS) V. LUMBER AND SAWMILL WORKERS' UNION LOCAL 2537, SUDBURY, ONTARIO (RESPONDENT). (18 EMPLOYEES). (GRANTED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JUNE

11721-66-U: INTERNATIONAL LADIES GARMENT WORKERS' UNION (APPLICANT) V. FORMFIT INTERNATIONAL, S. A. (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 193).

11790-66-U: THE ONTARIO-MINNESOTA PULP AND PAPER COMPANY LIMITED (APPLICANT) V. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, FORT FRANCES LODGE 771 F. A. BEECHINOR, V. C. ERICKSON, A. DITTARA, J. DICK JR., V. COUSINEAU S. J. CARTER, R. FERGUSON, T. GLADU (RESPONDENTS). (WITHDRAWN).

11791-66-U: THE ONTARIO-MINNESOTA PULP AND PAPER COMPANY LIMITED (APPLICANT) V. JOHN DICK, JR. (RESPONDENT). (WITHDRAWN).

11792-66-U: THE ONTARIO-MINNESOTA PULP AND PAPER COMPANY LIMITED (APPLICANT) V. MERVYN CYR, JAS. MCINNIS, SR., ALPHONSE DAIGNAULT (RESPONDENTS). (WITHDRAWN).

11793-66-U: THE ONTARIO-MINNESOTA PULP AND PAPER COMPANY LIMITED (APPLICANT) V. GEORGE W. CALDER ET AL (RESPONDENTS). (WITHDRAWN).

11878-66-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. DASHWOOD PLANING MILLS LIMITED (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING JUNE

10720-65-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. FORD MOTOR COMPANY OF CANADA LIMITED (RESPONDENT).

11442-65-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. FORD MOTOR COMPANY OF CANADA LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 195).

11636-66-U: I.A.T.S.E. LOCAL #435 (COMPLAINANT) V. MR. NESTOR BRECHOOK, OWNER ROXY THEATRE, WAWA, ONT. (RESPONDENT).

11704-66-U: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (COMPLAINANT) V. BEXON INVESTMENTS LIMITED AND MORRIS A. HUNTER, INVESTMENTS LIMITED, BOTH PRIVATE ONTARIO COMPANIES CARRYING ON BUSINESS

IN PARTNERSHIP UNDER THE FIRM NAME AND STYLE OF WESTLAW DEVELOPMENTS, AND MORRIS A. HUNTER (RESPONDENTS).

11709-66-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (COMPLAINANT) V. RIDEAU RIVER HOMES (RESPONDENT).

11751-66-U: MARY ANNE GIRARD 1517 FORD BLVD. WINDSOR, ONT., RUTH BLONDIN 803 VICTORIA RD. LA SALLE, ONT. (COMPLAINANTS) V. PERFECTION AUTOMOTIVE 3766 PETER ST. WINDSOR, ONT. (RESPONDENT).

11762-66-U: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, LOCAL 28 (COMPLAINANT) V. DANFORTH PRESS LIMITED (RESPONDENT).

11770-66-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. SENTRY DEPARTMENT STORES LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 201).

11804-66-U: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261 (COMPLAINANT) V. CANADA CATERING Co. LTD. (RESPONDENT).

11841-66-U: LOCAL UNION 773 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (COMPLAINANT) V. DUPP'S T. V. AND ELECTRONICS (RESPONDENT).

11877-66-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (COMPLAINANT) V. DASHWOOD PLANING MILLS LIMITED (RESPONDENT).

11908-66-U: ELIANE DUBUC (COMPLAINANT) V. ST. LAWRENCE TEXTILES LIMITED (RESPONDENT).

11938-66-U: LLOYD PATE (COMPLAINANT) V. COMMANDO PLATING (RESPONDENT).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING JUNE

11627-66-M: THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR (APPLICANT) V. BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, (AFFILIATED WITH BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION A.F. OF L. C.I.O. C.L.C.), AND LOCAL 519, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (RESPONDENTS).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PROFESSIONAL TEACHING STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

NUMBER OF NAMES OF PERSONS ON VOTERS'

LIST

NUMBER OF PERSONS WHO CAST BALLOTS

74

74

NUMBER OF BALLOTS MARKED IN FAVOUR OF BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, (AFFILIATED WITH BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION A.F. OF L. C.I.O. C.L.C.)	38
NUMBER OF BALLOTS MARKED IN FAVOUR OF LOCAL 519, RETAIL WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC	36

(SEE INDEXED ENDORSEMENT PAGE 203).

APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING JUNE

11532-65-M: INTERNATIONAL LEATHER GOODS, PLASTICS & NOVELTY WORKERS' UNION,
LOCAL 8 (APPLICANT) v. A. J. SIRIS PRODUCTS (CANADA) LTD. (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 204).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

11413-65-R: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. ONTARIO STEEL PRODUCTS COMPANY
LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

11448-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION
OF AMERICA, LOCAL 506 (APPLICANT) v. VILLAGE CONTRACTORS (RESPONDENT) v.
BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1 (INTERVENER) v.
GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

11460-65-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION, AFL:CIO:CLC
(APPLICANT) v. TWEED VENEERS LIMITED SHOP UNION (RESPONDENT) v. TWEED VENEERS
LIMITED (INTERVENER). (REQUEST DENIED).

11474-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION
OF AMERICA, LOCAL 506 (APPLICANT) v. ZACHARY DE VUONO LIMITED (RESPONDENT) v.
BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1 (INTERVENER) v. GROUP
OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

INDEXED ENDORSEMENTS - CERTIFICATION

10775-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. FALCONBRIDGE NICKEL
MINES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND
H. F. IRWIN.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., D. M. STOREY AND B. ORMSBY
FOR THE APPLICANT, N. MACL. ROGERS, Q.C., J. C. CARSON AND E. R. MATHER FOR

THE RESPONDENT.

DECISION OF: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND
BOARD MEMBER E. BOYER. (JUNE 15, 1966)

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE BOARD, ON SEPTEMBER 15TH, 1965, APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT IN THIS MATTER.

2. SINCE IT APPEARED TO THE BOARD THAT THE EXAMINER WAS MAKING LITTLE PROGRESS IN COMPLETING HIS INQUIRY BECAUSE OF CERTAIN DIFFICULTIES CONCERNING PERSONS INCLUDED IN SPECIFIC CLASSIFICATIONS CLAIMED BY THE APPLICANT AS ELIGIBLE FOR INCLUSION IN THE OFFICE, CLERICAL AND TECHNICAL BARGAINING UNIT FOR WHICH IT SEEKS TO BE CERTIFIED, THE BOARD DIRECTED THE REGISTRAR TO LIST THIS MATTER FOR CONTINUATION OF HEARING IN ORDER THAT THE BOARD BE ABLE TO DETERMINE HOW THE EXAMINER'S INQUIRY SHOULD PROCEED WITH RESPECT TO THE CLASSIFICATIONS IN QUESTION. FOLLOWING A HEARING ON DECEMBER 15TH, 1965, THE BOARD REACHED ITS DECISION DATED MARCH 2ND, 1966 IN THIS MATTER. ON MARCH 28TH, 1966, THE BOARD DIRECTED THE REGISTRAR TO LIST THIS MATTER FOR CONTINUATION OF HEARING AT THE REQUEST OF THE RESPONDENT WITH THE CONSENT OF THE APPLICANT TO REVIEW ITS DECISION OF MARCH 2ND, 1966.

3. AT THE REVIEW HEARING HELD ON APRIL 18TH, 1966, THE RESPONDENT CALLED EVIDENCE IN SUPPORT OF ITS POSITION AND THE PARTIES ADDRESSED ARGUMENT TO THE BOARD ON THE QUESTIONS IN ISSUE. THE MAIN QUESTION TO BE CONSIDERED BY THE BOARD IS WHETHER CERTAIN PERSONS EMPLOYED BY THE RESPONDENT ARE MEMBERS OF THE ENGINEERING PROFESSION ENTITLED TO PRACTISE IN ONTARIO AND ARE EMPLOYED IN A PROFESSIONAL CAPACITY AND ACCORDINGLY, PURSUANT TO THE PROVISIONS OF SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT, ARE NOT DEEMED TO BE EMPLOYEES WITHIN THE MEANING OF THE ACT.

4. THE PERSONS TO WHOM THE QUESTION PERTAINS FALL WITHIN ONE OF THREE CLASSIFICATIONS EMPLOYED BY THE RESPONDENT WHICH ARE "ENGINEER", "METALLURGIST" AND "GEOLOGIST".

5. THE APPLICANT AGREED THAT CERTAIN PERSONS EMPLOYED BY THE RESPONDENT WHO ARE MEMBERS OF THE ASSOCIATION OF PROFESSIONAL ENGINEERS OF THE PROVINCE OF ONTARIO, (HEREINAFTER CALLED THE ASSOCIATION) AND WHO PERFORM SUBSTANTIALLY THE SAME WORK AS OTHER PERSONS EMPLOYED IN THE DISPUTED CLASSIFICATIONS ARE TO BE EXCLUDED FROM THE BARGAINING UNIT PURSUANT TO THE PROVISIONS OF SECTION 1 (3) (A) OF THE ACT. HOWEVER, THE APPLICANT TAKES THE POSITION THAT UNLESS A PERSON EMPLOYED IN THE DISPUTED CLASSIFICATIONS IS A MEMBER OF THE ASSOCIATION HE IS ELIGIBLE FOR COLLECTIVE BARGAINING.

6. THE RESPONDENT'S POSITION IS THAT ALL THE PERSONS EMPLOYED IN THE DISPUTED CLASSIFICATIONS (WITH PERHAPS ONE OR TWO EXCEPTIONS) ARE UNIVERSITY GRADUATES DOING ENGINEERING WORK WHICH THEY ARE ENTITLED TO DO PURSUANT TO THE PROVISIONS OF SECTION 2 (E) OF THE PROFESSIONAL ENGINEERS ACT R.S.O. 1960 CHAPTER 309, AND WHICH WORK, ACCORDING TO THE RESPONDENT'S INTERPRETATION OF THAT ACT, IS PROFESSIONAL ENGINEERING. THE RESPONDENT FURTHER ARGUED THAT WHILE SUCH PERSONS DO NOT HAVE TO JOIN THE ASSOCIATION PURSUANT TO THE

PROVISIONS OF SECTION 2 (E), THEY ARE MEMBERS OF THE ENGINEERING PROFESSION ENTITLED TO PRACTISE IN ONTARIO AND ARE EMPLOYED IN A PROFESSIONAL CAPACITY AND ACCORDINGLY ARE NOT EMPLOYEES ELIGIBLE FOR INCLUSION IN A BARGAINING UNIT PURSUANT TO THE PROVISIONS OF SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT.

7. SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

"FOR THE PURPOSES OF THIS ACT, NO PERSON SHALL BE DEEMED TO BE AN EMPLOYEE,

(A) WHO IS A MEMBER OF THE ARCHITECTURAL, DENTAL, ENGINEERING, LAND SURVEYING, LEGAL OR MEDICAL PROFESSION ENTITLED TO PRACTISE IN ONTARIO AND EMPLOYED IN A PROFESSIONAL CAPACITY"

8. THE SECTIONS OF THE PROFESSIONAL ENGINEERS ACT WITH WHICH WE ARE PRIMARILY CONCERNED READ AS FOLLOWS:

1. (A) "ASSOCIATION" MEANS THE ASSOCIATION OF PROFESSIONAL ENGINEERS OF THE PROVINCE OF ONTARIO

(E) "LICENSED" MEANS THAT PERMISSION HAS BEEN GRANTED BY THE COUNCIL TO A NON-RESIDENT ENGINEER TO PRACTISE TEMPORARILY WITHOUT BEING REGISTERED, AND "LICENCE" MEANS THE OFFICIAL CERTIFICATE UNDER THE SEAL OF THE ASSOCIATION EVIDENCING SUCH PERMISSION

(F) "MEMBER" MEANS A REGISTERED MEMBER OF THE ASSOCIATION

(H) "PROFESSIONAL ENGINEER" MEANS A PERSON WHO PRACTISES PROFESSIONAL ENGINEERING

(I) "PROFESSIONAL ENGINEERING" SAVE AS HEREINAFTER MENTIONED MEANS THE ADVISING ON, THE REPORTING ON, THE DESIGNING OF, THE SUPERVISING OF THE CONSTRUCTION OF, ALL PUBLIC UTILITIES, INDUSTRIAL WORKS, RAILWAYS, TRAMWAYS, BRIDGES, TUNNELS, HIGHWAYS, ROADS, CANALS, HARBOUR WORKS, LIGHTHOUSES, RIVER IMPROVEMENTS, WET DOCKS, DRY DOCKS, FLOATING DOCKS, DREDGES, CRANES, DRAINAGE WORKS, IRRIGATION WORKS, WATERWORKS, WATER PURIFICATION PLANTS, SEWERAGE WORKS, SEWAGE DISPOSAL WORKS, INCINERATORS, HYDRAULIC WORKS, POWER TRANSMISSION SYSTEMS, STEEL, CONCRETE AND REINFORCED CONCRETE STRUCTURES, ELECTRIC LIGHTING SYSTEMS, ELECTRIC POWER PLANTS, ELECTRIC MACHINERY, ELECTRIC APPARATUS, ELECTRICAL COMMUNICATION

SYSTEMS AND EQUIPMENT, MINERAL PROPERTY, MINING MACHINERY, MINING DEVELOPMENT, MINING OPERATIONS, GAS AND OIL DEVELOPMENTS, SMELTERS, REFINERIES, METALLURGICAL MACHINERY, AND EQUIPMENT AND APPARATUS FOR CARRYING OUT SUCH OPERATIONS, MACHINERY, BOILERS AND THEIR AUXILIARIES, STEAM ENGINES, HYDRAULIC TURBINES, PUMPS, INTERNAL COMBUSTION ENGINES AND OTHER MECHANICAL STRUCTURES, CHEMICAL AND METALLURGICAL MACHINERY, APPARATUS AND PROCESSES, AND AIRCRAFT AND GENERALLY ALL OTHER ENGINEERING WORKS INCLUDING THE ENGINEERING WORKS AND INSTALLATIONS RELATING TO AIRPORTS, AIRFIELDS AND LANDING STRIPS AND RELATING TO TOWN AND COMMUNITY PLANNING

- (J) "REGISTERED" MEANS THAT AN ENGINEER HAS BEEN ADMITTED TO MEMBERSHIP IN THE ASSOCIATION AND THAT HIS NAME HAS BEEN ENROLLED IN THE REGISTER, AND "CERTIFICATE OF REGISTRATION" MEANS THE OFFICIAL CERTIFICATE UNDER THE SEAL OF THE ASSOCIATION EVIDENCING THE SAME.

2. NOTHING IN THIS ACT PREVENTS OR SHALL BE DEEMED TO PREVENT,

- (D) ANY PERSON FROM PRACTISING HIS PROFESSION, TRADE OR CALLING AS A BACTERIOLOGIST, CHEMIST, GEOLOGIST, MINERALOGIST OR PHYSICIST;
- (E) ANY PERSON FROM ADVISING ON OR REPORTING ON ANY MINERAL PROPERTY OR PROSPECT, OR FROM ADVISING ON, REPORTING ON, DESIGNING, OR SUPERVISING THE CONSTRUCTION OF ANY MINING PLANT, MINING MACHINERY, MINING DEVELOPMENT, MINING OPERATIONS, GAS AND OIL DEVELOPMENTS, SMELTERS, REFINERIES, METALLURGICAL MACHINERY, OR EQUIPMENT, APPARATUS, OR PLANT OR ANYTHING IN CONNECTION THEREWITH FOR CARRYING OUT SUCH OPERATIONS OR CHEMICAL MACHINERY, APPARATUS OR PROCESSES;

OR TO REQUIRE ANY SUCH PERSON TO BECOME REGISTERED OR LICENSED UNDER THIS ACT TO SO PERFORM OR PRACTISE,

IT IS COMMON GROUND BETWEEN THE PARTIES THAT THE EMPLOYEES IN DISPUTE PERFORM WORK PURSUANT TO THE PROVISIONS OF SECTION 2 (E) OF THE PROFESSIONAL ENGINEERS ACT.

9. LAWRENCE CRAWLEY SENTANCE, THE EXECUTIVE DIRECTOR OF THE ASSOCIATION WAS CALLED BY THE RESPONDENT TO TESTIFY. MR. SENTANCE IS A PROFESSIONAL ENGINEER AND IS OF COURSE A MEMBER OF THE ASSOCIATION. HE HAS BEEN A MEMBER OF THE EXECUTIVE COUNCIL SINCE 1951.

10. MR. SENTANCE TESTIFIED THAT TO BECOME A REGISTERED MEMBER OF THE ASSOCIATION A PERSON MUST BE 21 YEARS OF AGE OR OLDER, A RESIDENT OF THE PROVINCE OF ONTARIO, MUST PASS THE PRESCRIBED EXAMINATIONS, HAVE FIVE YEARS EXPERIENCE AND BE OF SUITABLE CHARACTER. IN ADDITION THE ASSOCIATION HAS CERTAIN DISCRETIONARY POWERS IN ADMITTING MEMBERSHIP.

11. A GRADUATE OF A RECOGNIZED FACULTY IN AN ACCREDITED COURSE POSSESSING TWO YEARS PRACTICAL EXPERIENCE IS ELIGIBLE FOR MEMBERSHIP IN THE ASSOCIATION. AN EXAMPLE OF SUCH A GRADUATE WOULD BE A PERSON WITH A DEGREE IN "APPLIED SCIENCE FROM THE UNIVERSITY OF TORONTO". HE FURTHER TESTIFIED THAT GRADUATES OF OTHER HONOUR SCIENCE COURSES SUCH AS METALLURGICAL SCIENCE MAY BE CONSIDERED A PERSON HAVING A DOCTORATE IN METALLURGICAL SCIENCE WITH FIVE OR MORE YEARS PRACTICAL EXPERIENCE IN ENGINEERING COULD BE ADMITTED TO MEMBERSHIP, HOWEVER, A GRADUATE WITH A MASTER'S DEGREE WOULD REQUIRE TEN YEARS EXPERIENCE. A GRADUATE WITH A BACHELOR'S DEGREE WOULD BE REQUIRED TO WRITE CERTAIN EXAMINATIONS AFTER ACQUIRING FIVE YEARS EXPERIENCE PRIOR TO ADMISSION TO MEMBERSHIP IN THE ASSOCIATION. THE ASSOCIATION WOULD NOT CONSIDER SUCH GRADUATES PROFESSIONAL ENGINEERS DURING THE PERIOD THEY WERE GAINING THEIR PRACTICAL EXPERIENCE UNDER THE GUIDANCE OF A PROFESSIONAL ENGINEER, BUT SUCH GRADUATES WOULD BE CONSIDERED TO BE "ENGINEERS-IN-TRAINING" WHICH IS A COMMON TERM USED TO DESCRIBE GRADUATES WHO ARE IN THE PROCESS OF GAINING PRACTICAL EXPERIENCE. MR. SENTANCE TESTIFIED THAT WORK PERFORMED PURSUANT TO THE PROVISIONS OF SECTION 2 (E) WAS NOT PROFESSIONAL ENGINEERING WITHIN THE MEANING OF SECTION 1 (1) OF THE PROFESSIONAL ENGINEERS ACT AND THE MERE FACT THAT A PERSON IS EMPLOYED IN A POSITION UNDER SECTION 2 (E) DOES NOT ENTITLE THAT PERSON TO BE REGARDED BY THE ASSOCIATION AS A "MINING ENGINEER".

12. WORK PERFORMED UNDER SECTION 2(E) IS A LIMITED FIELD IN THE GENERAL FIELD OF ENGINEERING. A PROFESSIONAL ENGINEER IS LEGALLY ENTITLED TO PRACTISE ALL ASPECTS OF ENGINEERING INCLUDING THE FIELD OF MINING.

13. THE ASSOCIATION KEEPS NO RECORD OF PERSONS DOING WORK UNDER SECTION 2 (E). A PERSON CAN PERFORM WORK PURSUANT TO THE PROVISIONS OF SECTION 2 (E) WITHOUT ANY UNIVERSITY TRAINING WHATSOEVER. AN EXAMPLE OF SUCH PERSON MIGHT BE A PROSPECTOR WHOSE KNOWLEDGE, WHICH MAY BE CONSIDERABLE, IS BASED SOLELY ON PRACTICAL EXPERIENCE.

14. MR. SENTANCE STATED THAT A GRADUATE WHO IS EMPLOYED AS AN ENGINEER-IN-TRAINING, COULD BE CONSIDERED TO BE A MEMBER OF THE ENGINEERING PROFESSION "WITH A SMALL 'e' AND SMALL 'p' BUT THAT SUCH PERSONS WOULD NOT BE PRACTISING PROFESSIONAL ENGINEERING UNDER SECTION 1 (1) OF THE PROFESSIONAL ENGINEERS ACT IN ATTEMPTING TO DEFINE WHAT HE MEANT BY SMALL "p" AND SMALL "e" PROFESSIONAL ENGINEERS, MR. SENTANCE SAID THAT THEY WOULD BE MEMBERS OF THE "ENGINEERING FRATERNITY" BECAUSE OF THE NATURE OF THE WORK THEY PERFORM IN THE ENGINEERING FIELD. MR. SENTANCE TESTIFIED THAT WORK PERFORMED UNDER AND BY VIRTUE OF SECTION 2 (E) OF THE PROFESSIONAL ENGINEERS ACT WOULD NOT BE CONSIDERED TO BE THE PRACTICE OF PROFESSIONAL ENGINEERING AS DEFINED BY SECTION 1 (1) OF THE PROFESSIONAL ENGINEERS ACT.

15. THE RESPONDENT ALSO CALLED AS A WITNESS GEORGE BURWASH LANGFORD, WHO HAS BEEN A PROFESSOR AT THE UNIVERSITY OF TORONTO SINCE 1937.

16. PROFESSOR LANGFORD IS A GRADUATE MINING ENGINEER WHO TOOK POST GRADUATE WORK IN GEOLOGY. HE IS A MEMBER OF THE ASSOCIATION AND ALSO IS A PAST PRESIDENT OF THE ASSOCIATION, AND A FORMER MEMBER OF THE ASSOCIATION COUNCIL FOR A PERIOD OF 15 TO 20 YEARS.

17. PROFESSOR LANGFORD TESTIFIED THAT A PERSON WHO PERFORMS WORK UNDER SECTION 2 (E) OF THE PROFESSIONAL ENGINEERS ACT AND WHO HAS AN ENGINEERING DEGREE BUT IS NOT A MEMBER OF THE ASSOCIATION, IS A "MEMBER OF THE ENGINEERING PROFESSION IN SMALL LETTERS, AS A MATTER OF GENERAL PARLANCE." A PERSON WHO IS NOT A MEMBER OF THE ASSOCIATION BECOMES A MEMBER OF THE PROFESSIONAL ENGINEERS IN SMALL LETTERS WHEN HE HAS ACHIEVED A CERTAIN DEGREE OF COMPETENCE PERFORMING ENGINEERING FUNCTIONS AFTER GRADUATING. SUCH A PERSON MUST BE ACCEPTED IN THE GROUP WHICH IS A PERSONAL MATTER, "PERSONALITIES ARE INVOLVED".

18. PROFESSOR LANGFORD TESTIFIED THAT HE KNOWS OF SEVERAL PERSONS WHO, THROUGH PRACTICAL EXPERIENCE GAINED WHILE FUNCTIONING PURSUANT TO THE PROVISIONS OF SECTION 2 (E) OF THE PROFESSIONAL ENGINEERS ACT, HAVE ACQUIRED A HIGH DEGREE OF COMPETENCE AND HAVE ACHIEVED SUCH PROMINENCE IN THE ENGINEERING FIELD THAT PROFESSOR LANGFORD WOULD BE PREPARED TO ACCEPT THEIR OPINIONS AND HE CONSIDERS THEM TO BE FULLY QUALIFIED. WHILE THE MAJORITY OF SUCH PERSONS HAVE ENGINEERING DEGREES HE KNOWS OF A FEW SUCH QUALIFIED PERSONS WHO DO NOT HAVE AN ENGINEERING DEGREE. EACH INDIVIDUAL CASE MUST BE STUDIED BY PROFESSOR LANGFORD TO DETERMINE THE NATURE AND EXTENT OF EXPERIENCE AS THERE IS NO OBJECTIVE STANDARD IN HIS ASSESSMENT OF A PERSON WHO IS NOT A MEMBER OF THE ASSOCIATION. PROFESSOR LANGFORD ALSO STATED THAT ONLY THE ASSOCIATION CAN ASSESS THE ACCEPTABILITY OF A SPECIFIC UNIVERSITY AND ACCREDIT A UNIVERSITY ENGINEERING COURSE.

19. HE TESTIFIED THAT A GEOLOGIST'S REPORT WAS NOT THE PRACTICE OF PROFESSIONAL ENGINEERING UNDER SECTION 1 (I) BUT WAS ONE OF THE EXCEPTIONS DESCRIBED IN SECTION 2 (D) OF THE PROFESSIONAL ENGINEERS ACT.

20. THE RESPONDENT ALSO CALLED AS WITNESSES, TWO OF ITS OFFICIALS WHO WERE MEMBERS OF THE ASSOCIATION AND WHO TESTIFIED CONCERNING THE FACT THAT SOME OF ITS EMPLOYEES WHO ARE MEMBERS OF THE ASSOCIATION ARE EMPLOYED IN THE SAME EMPLOYMENT CLASSIFICATIONS AND PERFORM THE SAME WORK AS THE PERSONS IN DISPUTE.

21. IT WOULD APPEAR FROM THE EVIDENCE THAT APART FROM PROFESSIONAL ENGINEERS WHO ARE MEMBERS OF THE ASSOCIATION AND WHO ARE EMPLOYED IN A PROFESSIONAL CAPACITY, WHOSE STATUS AS EMPLOYEES WITHIN THE MEANING OF THE ACT IS NOT IN DISPUTE, THAT THERE IS ANOTHER CLASS OF EMPLOYEES WHO ARE NOT MEMBERS OF THE ASSOCIATION BUT BECAUSE OF THEIR EDUCATIONAL QUALIFICATIONS AND BECAUSE OF THE WORK THEY DO IN THE ENGINEERING FIELD THEY ARE COMMONLY CONSIDERED TO BE MEMBERS OF THE ENGINEERING PROFESSION WITH A SMALL "E" AND SMALL "P". THESE OTHER MEMBERS OF THE ENGINEERING PROFESSION ARE NOT PROFESSIONAL ENGINEERS WITHIN THE MEANING OF SECTION 1 (H) OF THE PROFESSIONAL ENGINEERS ACT AND ARE NOT ENGAGED IN THE PRACTICE OF PROFESSIONAL ENGINEERING AS DEFINED IN SECTION 1 (I) OF THAT ACT. THEY ARE HOWEVER EMPLOYED PURSUANT TO THE PROVISIONS OF SECTION 2 (E) OF THE PROFESSIONAL ENGINEERS ACT.

22. IT APPEARS FROM THE TESTIMONY OF PROFESSOR LANGFORD THAT SOME OF THESE "MEMBERS OF THE ENGINEERING PROFESSION" WHO ARE NOT MEMBERS OF THE ASSOCIATION HAVE ACQUIRED SUCH A HIGH DEGREE OF COMPETENCE THAT HE PERSONALLY CONSIDERS THEM TO BE PROFESSIONAL ENGINEERS. HOWEVER, IT IS CLEAR THAT THEY ARE NOT PROFESSIONAL ENGINEERS WITHIN THE MEANING OF THE PROFESSIONAL ENGINEERS ACT AND ACCORDINGLY ARE PROHIBITED FROM PRACTISING PROFESSIONAL ENGINEERING WITHIN THE MEANING OF THAT ACT.

23. ON THE BASIS OF ALL THE EVIDENCE BEFORE US AND THE WORDING OF THE PROFESSIONAL ENGINEERS ACT WE FIND THAT ANY PERSON PERFORMING WORK DESCRIBED BY AND SOLELY BY VIRTUE OF SECTION 2 (E) OF THE PROFESSIONAL ENGINEERS ACT ARE NOT ENGAGED IN THE PRACTICE OF PROFESSIONAL ENGINEERING DEFINED BY SECTION 1 (1) OF THAT ACT.

24. SECTION 30 OF THE PROFESSIONAL ENGINEERS ACT WHICH DEALS WITH THE PENALTIES TO BE LEVIED AGAINST A PERSON, WHO BEING UNREGISTERED OR UNLICENSED UNDER THAT ACT ATTEMPTS TO PRACTISE PROFESSIONAL ENGINEERING, READS AS FOLLOWS:

"ANY PERSON IN ONTARIO WHO, NOT BEING REGISTERED AS A MEMBER OF THE ASSOCIATION IN ONTARIO, OR LICENSED BY THE ASSOCIATION,

- (A) USES VERBALLY OR OTHERWISE THE TITLE OF PROFESSIONAL ENGINEER, OR MAKES USE OF ANY ADDITION TO OR ABBREVIATION OF SUCH TITLE, OR OF ANY WORDS, NAME OR DESIGNATION THAT WILL LEAD TO THE BELIEF THAT HE IS A PROFESSIONAL ENGINEER OR A MEMBER OF THE ASSOCIATION, OR EXCEPT AS PERMITTED BY SECTION 2 USES THE TITLE OR DESIGNATION "ENGINEER" IN SUCH A MANNER AS WILL LEAD TO THE BELIEF THAT HE IS A PROFESSIONAL ENGINEER OR MEMBER OF THE ASSOCIATION;
- (B) ADVERTISES OR HOLDS HIMSELF OUT OR, EXCEPT AS PROVIDED BY SECTION 2 CONDUCTS HIMSELF IN ANY WAY OR BY ANY MEANS AS A MEMBER OF THE ASSOCIATION OR PROFESSIONAL ENGINEER; OR
- (C) ENGAGES IN THE PRACTICE OF PROFESSIONAL ENGINEERING,

IS GUILTY OF AN OFFENCE AND ON SUMMARY CONVICTION IS LIABLE TO A FINE OF NOT LESS THAN \$100 AND NOT MORE THAN \$200 FOR THE FIRST OFFENCE, AND OF NOT LESS THAN \$200 AND NOT MORE THAN \$500 OR IMPRISONMENT FOR A TERM OF NOT MORE THAN THREE MONTHS, OR BOTH, FOR ANY SUBSEQUENT OFFENCE."

(EMPHASIS ADDED)

25. IT IS TO BE NOTED THAT WHILE SUBSECTIONS (A) AND (B) OF SECTION 30 EXEMPT FROM THE OPERATIONS OF THAT SUBSECTION THE WORK PERFORMED BY PERSONS AS PERMITTED BY THE PROVISIONS OF SECTION 2, HOWEVER, IT IS NOT WITHOUT INTEREST TO NOTE THAT SUBSECTION (C) OF SECTION 30 WHICH READS "ENGAGES IN THE PRACTICE OF PROFESSIONAL ENGINEERING" CONTAINS NO EXCEPTIONS WHATSOEVER. IT IS THEREFORE ABUNDANTLY APPARENT THAT ANY WORK PERFORMED AS PERMITTED BY AND SOLELY BY VIRTUE OF SECTION 2 OF THAT ACT IS NOT THE PRACTICE OF PROFESSIONAL ENGINEERING WITHIN THE MEANING OF THE PROFESSIONAL ENGINEERS ACT.

26. SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT IMPOSES THREE TESTS, ALL OF WHICH MUST BE MET TO DETERMINE WHETHER A PERSON SHALL NOT BE DEEMED TO BE AN EMPLOYEE WITHIN THE MEANING OF THE ACT. THE THREE TESTS AS APPLIED TO THE ENGINEERING PROFESSION ARE AS FOLLOWS:

- (A) THE PERSON MUST BE A MEMBER OF THE ENGINEERING PROFESSION.
- (B) THE PERSON MUST BE ENTITLED TO PRACTISE IN ONTARIO.
- (C) THE PERSON MUST BE EMPLOYED IN A PROFESSIONAL CAPACITY.

27. DEALING WITH THE FIRST TEST, WE ARE OF OPINION THAT THE MEMBERS OF THE ENGINEERING PROFESSION WHO ARE REFERRED TO IN SECTION 1 (3) (A) ARE MEMBERS OF THE ASSOCIATION OF PROFESSIONAL ENGINEERS WITHIN THE MEANING OF THE PROFESSIONAL ENGINEERS ACT. TO DETERMINE OTHERWISE WOULD BE TO PLACE THE BOARD IN A VIRTUALLY IMPOSSIBLE POSITION AS IS READILY APPARENT FROM THE EVIDENCE CALLED BY THE RESPONDENT. BOTH MR. SENTANCE AND PROFESSOR LANGFORD REFERRED TO MEMBERS OF THE SMALL "E" AND SMALL "P" ENGINEERING PROFESSION WHO ARE RECOGNIZED BY THEM, NOT ONLY BECAUSE OF THE ACADEMIC TRAINING OF THE PERSONS IN QUESTION BUT ALSO BECAUSE OF THE NATURE AND EXTENT OF THEIR PRACTICAL EXPERIENCE WHICH TESTS ARE PERSONAL THINGS WHICH THEY ARE ABLE TO ASSESS BECAUSE OF THEIR OWN EXPERIENCE AND KNOWLEDGE WHICH IS CONSIDERABLE. THE EVIDENCE WAS THAT THERE WAS NO OBJECTIVE TEST TO APPLY TO SUCH PERSONS AND EVEN THE ACCEPTABILITY OF THE UNIVERSITY WHERE THEY STUDIED IS SUBJECT TO THE APPROVAL OF THE ASSOCIATION WHICH ALSO MUST ACCREDIT THE COURSE WHICH IS TAUGHT. IT WOULD BE ASKING THE BOARD TO PERFORM A VIRTUALLY IMPOSSIBLE FUNCTION IF THE BOARD IS ASKED TO DETERMINE WHO IS A MEMBER OF THE ENGINEERING PROFESSION WITHOUT PERMITTING THE BOARD TO ACCEPT THE GUIDANCE OF THE PROFESSIONAL ENGINEERS ACT IN THAT REGARD.

28. THE SECOND FACTOR TO BE CONSIDERED IS THAT THE PERSON MUST BE ENTITLED TO PRACTISE IN ONTARIO. THE FIRST QUESTION TO BE ASKED WITH RESPECT TO THIS TEST IS ENTITLED TO PRACTISE WHAT?. TO HAVE ANY MEANING THIS TEST MUST BE - ENTITLED TO PRACTISE PROFESSIONAL ENGINEERING IN ONTARIO. THE PROFESSIONAL ENGINEERING MUST BE PROFESSIONAL ENGINEERING AS DEFINED BY SECTION 1 (1) OF THE PROFESSIONAL ENGINEERS ACT WHICH IS THE STATUTE ENACTED FOR THE GUIDANCE OF EVERYONE. IT IS READILY APPARENT FROM THE EVIDENCE OF

THE RESPONDENT'S WITNESSES AND FROM THE READING OF SECTION 30 (c) ABOVE REFERRED TO, AND THE BOARD'S FINDINGS AS SET OUT ABOVE, THAT ANY EMPLOYEES WHO PERFORM ENGINEERING WORK PURSUANT TO AND BY VIRTUE OF SECTION 2 (e) OF THE PROFESSIONAL ENGINEERS ACT ARE NOT ENGAGED IN THE PRACTICE OF PROFESSIONAL ENGINEERING WITHIN THE MEANING OF SECTION 1(i).

29. THE LAST TEST IS THAT THE PERSON BE EMPLOYED IN A PROFESSIONAL CAPACITY. AGAIN TO GIVE MEANING TO THIS TEST THE "PROFESSIONAL CAPACITY" WITH RELATION TO MEMBERS OF THE ENGINEERING PROFESSION MUST BE TO BE THE CAPACITY OF A PROFESSIONAL ENGINEER. FOR THE REASONS OUTLINED ABOVE PERSONS EMPLOYED UNDER AND BY VIRTUE OF SECTION 2 (e) WHILE PERHAPS EMPLOYED IN THEIR CAPACITY WITH RESPECT TO SOME OTHER PROFESSION ARE NOT EMPLOYED IN THE CAPACITY OF PROFESSIONAL ENGINEERS EVEN THOUGH A PROFESSIONAL ENGINEER WHO IS A MEMBER OF THE ASSOCIATION COULD PROPERLY BE EMPLOYED TO PERFORM THE WORK DESCRIBED BY SECTION 2 (e). A PROFESSIONAL ENGINEER WHO IS A MEMBER OF THE ASSOCIATION WOULD PERFORM SUCH WORK AS PART OF PROFESSIONAL ENGINEERING AS DESCRIBED BY SECTION 1 (i) RATHER THAN PURSUANT TO AND BY VIRTUE OF SECTION 2 (e) OF THAT ACT.

30. WE ARE THEREFORE OF OPINION THAT ONLY "PROFESSIONAL ENGINEERS" WITHIN THE MEANING OF SECTION 1 (h) OF THE PROFESSIONAL ENGINEERS ACT WHO ARE MEMBERS OF, OR ENGINEERS WHO ARE LICENCED BY, THE ASSOCIATION OF PROFESSIONAL ENGINEERS OF THE PROVINCE OF ONTARIO WHO ARE ENTITLED TO PRACTISE PROFESSIONAL ENGINEERING IN ONTARIO, WITHIN THE MEANING OF SECTION 1 (i) OF THAT ACT AND WHO ARE EMPLOYED IN THE CAPACITY OF A PROFESSIONAL ENGINEER MEET ALL THE REQUIREMENTS OF SECTION 1 (3) (a) OF THE LABOUR RELATIONS ACT.

31. WE THEREFORE FIND THAT THE PERSONS IN DISPUTE WHO ARE EMPLOYED BY THE RESPONDENT IN THE CLASSIFICATIONS OF "ENGINEER" "METALLURGIST" AND "GEOLOGIST" ARE NOT MEMBERS OF THE ENGINEERING PROFESSION ENTITLED TO PRACTISE IN ONTARIO, NOR ARE THEY EMPLOYED IN THE CAPACITY OF PROFESSIONAL ENGINEERS AS REQUIRED BY SECTION 1 (3) (a) OF THE ACT.

32. EXCEPT AS HEREIN QUALIFIED OR VARIED, THE BOARD DOES NOT DEEM IT ADVISABLE TO VARY OR REVOKE ITS DECISION OF MARCH 2ND, 1966, AND ACCORDINGLY CONFIRMS THAT DECISION WHEREIN MR. F. D. EDWARDS, EXAMINER, IS DIRECTED TO PROCEED WITH HIS EXAMINATION IN ACCORDANCE WITH THE AUTHORIZATION SET FORTH IN THE BOARD'S DECISION OF SEPTEMBER 15TH, 1965, TAKING INTO CONSIDERATION THE BOARD'S DECISION AS SET OUT ABOVE.

DECISION OF BOARD MEMBER H. F. IRWIN: (JUNE 15TH, 1966).

1. I DISSENT.

2. THE BOARD IS RECONSIDERING ITS DECISION THAT THE TERM "MEMBERS OF THE ENGINEERING PROFESSION" AS USED IN SECTION 1 (3) (a) OF THE LABOUR RELATIONS ACT, ONLY INCLUDES PERSONS WHO ARE MEMBERS OF THE ASSOCIATION OF PROFESSIONAL ENGINEERS OF THE PROVINCE OF ONTARIO (HEREINAFTER REFERRED TO AS THE ASSOCIATION).

3. PRIOR TO JUNE 13, 1922, WHEN THE PROFESSIONAL ENGINEERS ACT WAS ENACTED FOR THE FIRST TIME, THERE EXISTED IN ONTARIO AN ENGINEERING PROFESSION WHICH COMPRISED PERSONS WHO, IN THE MAIN, WERE GRADUATES IN ENGINEERING AND APPLIED SCIENCE FROM AN ACCREDITED UNIVERSITY. THERE ALSO EXISTED SUCH ORGANIZATIONS AS THE ENGINEERING INSTITUTE OF CANADA. ITS MEMBERSHIP WAS CONFINED TO ENGINEERS AND WAS ON A PURELY VOLUNTARY BASIS. APART FROM THE UNIVERSITY ENGINEERING GRADUATES, THE GROUP THAT MIGHT BE SAID TO CONSTITUTE THE PROFESSION WAS NOT WELL DEFINED AS THERE WAS A "GRAY AREA" CONSISTING OF AN UNCERTAIN NUMBER OF PERSONS, WHO BY REASON OF PRACTICAL EXPERIENCE AND APTITUDE HAD, WITHOUT FORMAL UNIVERSITY TRAINING, ATTAINED SUCH A DEGREE OF SKILL AND KNOWLEDGE THAT THEY WERE REGARDED BY OTHERS IN THE ENGINEERING PROFESSION AS MEMBERS OF THAT PROFESSION.

4. FROM 1922, MEMBERS OF THE PROFESSION COULD VOLUNTARILY JOIN THE NEW ASSOCIATION KNOWN AS THE ASSOCIATION OF PROFESSIONAL ENGINEERS OF THE PROVINCE OF ONTARIO BUT THEY WERE NOT REQUIRED TO DO SO IN ORDER TO CONTINUE PRACTISING AS ENGINEERS ALTHOUGH IT WAS AN OFFENCE TO USE THE TITLE "PROFESSIONAL ENGINEER" IF ONE WERE NOT A MEMBER. THE DEFINITION OF "PROFESSIONAL ENGINEER" AND "PROFESSIONAL ENGINEERING" IN THE 1922 ACT WAS SUBSTANTIALLY THE SAME AS IT APPEARS IN SECTION 1 (H) AND (I) OF THE PRESENT ACT. MEMBERS OF THE ASSOCIATION WERE PERMITTED TO USE THE TITLE "REGISTERED PROFESSIONAL ENGINEER" OR ANY ABBREVIATION THEREOF. THERE WERE NO EXEMPTIONS OF THE NATURE OF THOSE SET OUT IN SECTION 2 OF THE PRESENT ACT, PRESUMABLY BECAUSE MEMBERSHIP WAS VOLUNTARY. A GOOD MANY MEMBERS OF THE ENGINEERING PROFESSION DID NOT CHOOSE, NOR WERE THEY REQUIRED TO BELONG TO THE ASSOCIATION. THIS GROUP INCLUDED MANY OF THE ENGINEERS WHO CONFINED THEMSELVES TO THE PRACTICE OF MINING ENGINEERING EXCLUSIVELY.

5. EFFECTIVE MARCH 25, 1937, THE ACT WAS AMENDED SO AS TO MAKE IT COMPULSORY FOR ALL ENGINEERS, WITH SPECIFIED EXCEPTIONS, WHO WISHED TO PRACTISE PROFESSIONAL ENGINEERING IN ONTARIO TO BECOME MEMBERS OF THE ASSOCIATION. THESE EXCEPTIONS INCLUDED MINING ENGINEERING AS SET OUT IN SECTION 2 (E) OF THE ACT. THIS LATTER GROUP WAS APPARENTLY EXCLUDED MAINLY BECAUSE THERE EXISTED A GROUP OF PERSONS WHO REGARDED THEMSELVES AS MINING ENGINEERS BUT WHO DID NOT HAVE ANY FORMAL UNIVERSITY EDUCATION AND MIGHT NOT BE ADMITTED AS MEMBERS OF THE ASSOCIATION AND HENCE WOULD NOT BE ABLE TO CONTINUE PRACTISING THEIR PROFESSION. THUS THE PROFESSIONAL ENGINEERS ACT FROM 1937 DID NOT APPLY TO THOSE MEMBERS OF THE ENGINEERING PROFESSION WHO WERE ENGAGED IN MINING ENGINEERING AS IT IS DESCRIBED IN SECTION 2(E) OF THE PRESENT ACT. CONSEQUENTLY, THE MINING ENGINEERS ARE IN THE SAME POSITION TODAY AS THEY WERE PRIOR TO 1937 AND 1922, I.E. THEY MAY PRACTISE IN ONTARIO THAT PART OF PROFESSIONAL ENGINEERING DESCRIBED IN SECTION 2(E) OF THE ACT WITHOUT HAVING TO BE MEMBERS OF THE ASSOCIATION.

6. IN ORDER TO DETERMINE, THEREFORE, WHETHER A PERSON ENGAGED IN MINING ENGINEERING AS DESCRIBED IN SECTION 2(E) IS A "MEMBER OF THE ENGINEERING PROFESSION" WE HAVE TO LOOK AT EVIDENCE OTHER THAN THAT

ARISING OUT OF THE APPLICATION OF THE ACT. SO FAR AS SUCH PERSONS ARE CONCERNED, THE BOARD IS IN THE SAME POSITION AS IT WOULD HAVE BEEN PRIOR TO JUNE 13, 1922 OR MARCH 25, 1937.

7. THE MEANING OF THE WORD "PROFESSION" HAS BEEN CONSIDERED SEVERAL TIMES BY THE COURTS. A DECISION QUOTED BY COUNSEL FOR THE RESPONDENT IS THAT OF CARR V. I.R.C. (1944) 2 ALL. E.R. 163 (CA) WHERE THE COURT OF APPEAL HELD:

BEFORE ONE CAN SAY THAT A MAN IS CARRYING ON A PROFESSION ONE MUST SEE THAT HE HAS SOME SPECIAL SKILL OR ABILITY OR SOME SPECIAL QUALIFICATIONS DERIVED FROM TRAINING OR EXPERIENCE.

THE OXFORD DICTIONARY DEFINES "PROFESSION" AS:

THE OCCUPATION WHICH ONE PROFESSES TO BE SKILLED IN AND TO FOLLOW. A VOCATION IN WHICH A PROFESSED KNOWLEDGE OF SOME DEPARTMENT OF LEARNING IS USED IN ITS APPLICATION TO THE AFFAIRS OF OTHERS, OR IN THE PRACTISE OF AN ART FOUNDED UPON IT. THE BODY OF PERSONS ENGAGED IN A CALLING.

A PROFESSION, THEREFORE, IS NOT AN INCORPORATED AND ORGANIZED BODY OF PERSONS. THE WORD "PROFESSION" MERELY CONNOTES AN OCCUPATION USUALLY CONFINED TO A HIGHER DEGREE OF LEARNING. THE ASSOCIATION DID NOT CREATE THE ENGINEERING PROFESSION. ON THE CONTRARY, IT WAS THE MEMBERS OF THE ENGINEERING PROFESSION WHO CREATED THE ASSOCIATION.

8. A PERSON WHO IS A GRADUATE FROM A RECOGNIZED ENGINEERING FACULTY AND WHO IS PRACTISING MINING ENGINEERING IS, AS PROFESSOR LANGFORD STATED IN EVIDENCE, ENTITLED TO CALL HIMSELF A "MEMBER OF THE ENGINEERING PROFESSION WHEN HE HAS BEEN PRACTISING FOR SOME TIME." WHILE PROFESSOR LANGFORD WAS UNWILLING TO COMMIT HIMSELF TO A STATED MINIMUM NUMBER OF YEARS OF EXPERIENCE IT IS CLEAR THAT HE WOULD RECOGNIZE A PERSON AS A "MEMBER OF THE ENGINEERING PROFESSION" EVEN THOUGH HE WAS NOT A MEMBER OF THE ASSOCIATION IF HE HAD A MINIMUM OF ENGINEERING EXPERIENCE. THE FACT THAT THE BOARD MAY HAVE SOME DIFFICULTY IN DETERMINING THE BORDER LINE CASES IS NOT IN ITSELF SUFFICIENT TO JUSTIFY THE BOARD HOLDING TO ITS ORIGINAL INTERPRETATION. THE BOARD FREQUENTLY HAS DIFFICULT APPLICATIONS PERTAINING TO THE EXCLUSIONARY PROVISIONS OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT BUT IT HAS MANAGED TO COME TO RATIONAL CONCLUSIONS.

9. THE RESPONDENT COMPANY MAY HAVE IN ITS EMPLOY THE FOLLOWING ENGINEERS DOING EXACTLY THE SAME PROFESSIONAL ENGINEERING WORK:

- (A) A PERSON WHO IS A GRADUATE OF THE FACULTY OF APPLIED SCIENCE AND ENGINEERING OF THE UNIVERSITY OF TORONTO WITH THE DEGREE OF B.A. SC. WHO HAS JOINED THE ASSOCIATION;

- (B) A SECOND SUCH GRADUATE WHO HAD NOT JOINED THE ASSOCIATION;
- (C) A THIRD SUCH GRADUATE WHO IS A MEMBER OF THE QUEBEC ASSOCIATION OF PROFESSIONAL ENGINEERS BUT WHO HAS NOT JOINED THE ONTARIO ASSOCIATION;
- (D) A GRADUATE OF THE ROYAL SCHOOL OF MINES OF LONDON UNIVERSITY WITH THE DEGREE OF B. SC. AND WHO IS A MEMBER OF THE INSTITUTE OF CIVIL ENGINEERING OF GREAT BRITAIN BUT WHO HAS NOT JOINED THE ONTARIO ASSOCIATION;
- (E) A GRADUATE IN MINING ENGINEERING FROM THE MASSACHUSETTS INSTITUTE OF TECHNOLOGY, BOSTON, MASSACHUSETTS, U.S.A. BUT WHO HAS NOT JOINED THE ONTARIO ASSOCIATION.

IN THE PRACTICAL APPLICATION OF THE BOARD'S DECISION ONLY ONE OF THESE FIVE ENGINEERS, I.E. THE GRADUATE WHO JOINED THE ASSOCIATION, IS A MEMBER OF THE ENGINEERING PROFESSION ALTHOUGH ALL ARE ENTITLED UNDER THE EXCLUSIONARY PROVISIONS OF SECTION 2 (E) OF THE PROFESSIONAL ENGINEERS ACT TO PRACTISE PROFESSIONAL ENGINEERING IN ONTARIO AS IT RELATES TO THE MINING INDUSTRY AND ARE EMPLOYED IN A PROFESSIONAL CAPACITY BY THE COMPANY IN ITS SUDBURY OPERATIONS.

10. IN THE INSTANT CASE, WHICH I AGAIN EMPHASIZE RELATES SOLELY TO THE MINING INDUSTRY, I WOULD HAVE FOUND THAT A PERSON IN THE EMPLOY OF THE RESPONDENT AND DOING PROFESSIONAL ENGINEERING WORK IS A MEMBER OF THE ENGINEERING PROFESSION ENTITLED TO PRACTISE IN ONTARIO AND EMPLOYED IN A PROFESSIONAL CAPACITY IF HE IS A MEMBER OF THE ASSOCIATION OR IS ELIGIBLE FOR MEMBERSHIP IN THE ASSOCIATION WITHOUT BEING REQUIRED TO TAKE FURTHER ACADEMIC TRAINING OR TO GAIN ADDITIONAL ENGINEERING EXPERIENCE. IT FOLLOWS, THEREFORE, THAT UNDER THE PROVISIONS OF SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT SUCH A PERSON OR PERSONS WOULD NOT BE DEEMED TO BE EMPLOYEES FOR THE PURPOSES OF THAT ACT.

11448-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. VILLAGE CONTRACTORS (RESPONDENT) V. BRICKLAYE MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT HEARING: R. KOSKIE, J. DILLON AND M. TOPPAN
APPEARING FOR THE APPLICANT; W. FRAM APPEARING FOR THE RESPONDENT;
AND LLOYD D. CADSBY APPEARING FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (JUNE 29, 1966)

FOLLOWING THE HEARING IN THIS MATTER ON MAY 2ND, 1966, THE APPLICANT IN LETTERS DATED MAY 20 AND JUNE 9TH, 1966 GAVE NOTICE OF INTENTION TO ADDUCE CERTAIN EVIDENCE AT FUTURE HEARINGS. AT A FURTHER HEARING HELD ON JUNE 21ST THE BOARD HEARD ARGUMENT RESPECTING THE RIGHT OF THE APPLICANT TO FILE SUCH A NOTICE OF INTENTION AT THIS STAGE OF THE PROCEEDINGS.

DEALING FIRSTLY WITH THE LETTER OF MAY 20, 1966, IT IS CLEAR THAT THE APPLICANT NOTIFIED THE BOARD OF ITS INTENTION "PROMPTLY UPON DISCOVERING THE CONDUCT ALLEGED" WITHIN THE MEANING OF SECTION 48(2) OF THE BOARD'S RULES OF PROCEDURE. IT IS ALSO CLEAR THAT THE PROPOSED EVIDENCE MAY BE MATERIAL TO ALLEGATIONS FILED WITH THE BOARD BY THE APPLICANT IN A LETTER DATED MAY 6, 1966. HOWEVER THE CONDUCT COMPLAINED OF, IF PROVED, RELATES TO MATTERS SUBSEQUENT TO THE ALLEGATIONS AND IN PARTICULAR SUBSEQUENT TO THE SIGNING OF THE COLLECTIVE AGREEMENT WHICH IS BEING CHALLENGED BY THE APPLICANT. THE PROPOSED EVIDENCE, THEREFORE, WOULD NOT APPEAR TO BE ADMISSIBLE UNLESS A PROPER FOUNDATION IS LAID FOR ITS INTRODUCTION. IN THE RESULT, IT IS PREMATURE IN OUR OPINION TO RULE ON THE ADMISSIBILITY OF THE MATTER REFERRED TO IN THE APPLICANT'S LETTER OF MAY 20, 1966.

TURNING NOW TO THE LETTER OF JUNE 9, 1966, IT IS ADMITTED THAT THE MATTERS THERE REFERRED TO WERE KNOWN TO THE APPLICANT FOR A CONSIDERABLE PERIOD OF TIME AND IT WAS ONLY THROUGH "INADVERTENCE" THAT THEY WERE NOT SET OUT IN THE LETTER OF MAY 6TH. COUNSEL FOR THE APPLICANT ADMITTEDLY FOUND HIMSELF IN AN EMBARRASSING POSITION, AND THE MORE SO BECAUSE HE OPPOSED THE REQUEST OF THE RESPONDENT AT AN EARLIER DATE FOR LEAVE TO FILE ALLEGATIONS WHICH THE RESPONDENT HAD FAILED TO MAKE PROMPTLY, AND, NO DOUBT "INADVERTENTLY". THIS MATTER WAS DEALT WITH BY THE BOARD IN ITS DECISIONS DATED MAY 4 AND JUNE 10, 1966.

THE APPLICANT SEEKS TO DISTINGUISH BETWEEN ALLEGATIONS AND FACTS PLEADED IN SUPPORT THEREOF. IT ARGUES THAT ALL IT IS SEEKING TO DO AT THIS TIME IS ENLARGE ON THE FACTS TO BE PLEADED IN CONNECTION WITH ALLEGATIONS ALREADY MADE IN THIS MATTER. SECTION 48(1) OF THE BOARD'S RULES OF PROCEDURE, HOWEVER, CLEARLY STATES THAT THE NOTICE OF INTENTION TO ALLEGE IMPROPER OR IRREGULAR CONDUCT "SHALL CONTAIN A CONCISE STATEMENT OF THE MATERIAL FACTS" ON WHICH IT IS INTENDED TO RELY AND THEREFORE THE REQUIREMENT OF PROMPTNESS IN SECTION 48(2) OF THE RULES APPLIES EQUALLY TO ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AND TO THE FACTS PLEADED IN SUPPORT THEREOF.

FURTHERMORE, THE MATERIAL FACTS WHICH THE APPLICANT NOW SEEKS LEAVE TO ALLEGE RELATE, IN ADDITION TO THE COLLECTIVE AGREEMENT PLEADED AS A BAR TO THE APPLICATION, TO ALLEGATIONS WHICH THE APPLICANT SOUGHT TO ALLEGE EARLIER IN THESE PROCEEDINGS IN CONNECTION WITH THE STATEMENTS OF DESIRE FILED BY EMPLOYEES. IN ITS DECISIONS DATED MARCH 17, APRIL 4 AND APRIL 20, 1966 THE APPLICANT WAS REFUSED LEAVE TO FILE SUCH ALLEGATIONS. INQUIRIES INTO THE STATEMENTS OF DESIRE HAVE BEEN CONTINUING FOR SOME TIME AND IT WOULD BE HIGHLY PREJUDICIAL IN OUR VIEW IF THE PROPOSED EVIDENCE WERE ADDUCED AT THIS LATE STAGE OF THE PROCEEDINGS. FINALLY THE INTRODUCTION OF THE EVIDENCE WOULD PROLONG A PROCEEDING WHICH HAS ALREADY STRETCHED OUT OVER FIVE MONTHS AND WITH THE END NOWHERE IN SIGHT.

HAVING REGARD THEN TO ALL THE ABOVE CONSIDERATIONS LEAVE IS REFUSED THE APPLICANT TO AMEND ITS NOTICE OF INTENTION DATED MAY 6, 1966 BY ADDING THE MATERIAL FACTS SET OUT IN ITS LETTER OF JUNE 9TH, 1966.

AT THE CONCLUSION OF THE HEARING ON JUNE 22, 1966 ARGUMENT WAS ADDRESSED TO THE BOARD BY ALL PARTIES IN CONNECTION WITH THE RESPONDENT'S LETTER TO THE BOARD DATED JUNE 10, 1966. THE POINT IN ISSUE IS WHETHER WITNESSES WHOSE DUTIES AND RESPONSIBILITIES AND STATUS WERE THE SUBJECT OF AN INQUIRY BY A BOARD EXAMINER APPOINTED MAY 16, 1966, COULD BE ASKED IN CROSS-EXAMINATION WHETHER THEY WERE MEMBERS OF A TRADE UNION, (THE INTERVENER) WHICH HAS A COLLECTIVE AGREEMENT WITH THE RESPONDENT COVERING EMPLOYEES, (BRICKLAYERS) WHO ARE NOT AFFECTED BY THIS APPLICATION WHICH IS CONCERNED WITH BRICKLAYER'S ASSISTANTS OR LABOURERS. THE EMPLOYEES TO WHOM IT IS PROPOSED TO PUT THE QUESTION ARE NOT EMPLOYEES WHO WOULD FALL INTO ANY BARGAINING UNIT WHICH THE BOARD MIGHT FIND APPROPRIATE IN THE PRESENT CASE. THE AGREEMENT REFERRED TO (EXHIBIT 3) CONTAINS CLOSED SHOP AND CHECK-OFF PROVISIONS.

IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE AND HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES THE BOARD DIRECTS THE EXAMINER TO PERMIT THE SAID QUESTION TO BE PUT TO THE WITNESSES. THE EXAMINER WILL INFORM WITNESSES TO WHOM THE QUESTIONS ARE PUT THAT THEY ARE NOT COMPELLED TO ANSWER THE QUESTIONS IF THEY DO NOT WISH TO DO SO. SEE SECTION 83(1)(c) OF THE LABOUR RELATIONS ACT.

IN MAKING SUCH DIRECTION THE BOARD IS NOT MAKING ANY ASSESSMENT OF THE WEIGHT WHICH SHOULD BE ACCORDED ANY TESTIMONY GIVEN AS A RESULT OF SUCH QUESTIONS. THIS WILL NO DOUBT BE DEALT WITH IN ARGUMENT LATER IN THE PROCEEDINGS.

11474-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. ZACHARY DE VUONO LIMITED (RESPONDENT) V. BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE, J. DILLON AND M. TOPPAN
APPEARING FOR THE APPLICANT, W. FRAM AND Z. DE VUONO APPEARING
FOR THE RESPONDENT AND LLOYD D. CADSBY APPEARING FOR THE OBJECTORS.

DECISION OF THE BOARD: (JUNE 30, 1966)

1. IN ITS DECISION DATED MAY 6TH, 1966 THE BOARD REVIEWED THE COURSE OF PROCEEDINGS IN THIS CASE UP TO THAT TIME. ONE OF THE MATTERS REFERRED TO WAS THE ABANDONMENT, BY LETTER DATED MARCH 28, 1966, OF THE INTERVENTION BY THE INTERVENER. IT WAS ALSO POINTED OUT THAT THE RESPONDENT AT THE HEARING HELD ON APRIL 26TH ADMITTED CERTAIN FACTS PLEADED BY THE APPLICANT IN ITS LETTER OF APRIL 18, 1966. THESE FACTS AS SET OUT IN THE SAID LETTER WERE:

- (A) AT ABOUT THE SAME TIME THAT THE BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA LOCAL 1 (HEREINAFTER REFERRED TO AS "LOCAL 1") WITHDREW ITS INTERVENTION IN THIS APPLICATION, IT SIGNED A COLLECTIVE AGREEMENT WITH THE MASONRY CONTRACTORS ASSOCIATION OF WHICH THE RESPONDENT IS A MEMBER. WE UNDERSTAND THAT THIS AGREEMENT COVERS THE EMPLOYEES WHO ARE THE SUBJECT MATTER OF THIS APPLICATION;
- (B) THE RESPONDENT IS MAKING CERTAIN DEDUCTIONS FROM THE WAGES OF ITS LABOURER EMPLOYEES AND PAYING OVER THESE SUMS TO LOCAL 1 ON ACCOUNT OF ITS DUES.

AT THAT HEARING, THE RESPONDENT ALSO TOOK THE POSITION THAT THE AGREEMENT REFERRED TO IN (A) ABOVE, CONSTITUTED A BAR TO THIS APPLICATION FOR CERTIFICATION. THE APPLICANT DISPUTED THIS AND WAS GIVEN LEAVE TO FILE FURTHER ALLEGATIONS RESPECTING THE AGREEMENT AND THE STATUS OF THE FORMER INTERVENER. THIS WAS DONE IN A DOCUMENT DATED MAY 5, 1966.

2. ALTHOUGH THE INTERVENER HAD ABANDONED ITS INTERVENTION AND WAS NO LONGER A PARTY TO THE PROCEEDINGS IT WAS NOTIFIED BY LETTER DATED APRIL 29, 1966, OF THIS NEW DEVELOPMENT BECAUSE IT IS A PARTY TO THE AGREEMENT PLEADED AS A BAR. THE FORMER INTERVENER WAS ALSO NOTIFIED OF THE CONTINUATION OF THE HEARINGS ON MAY 6TH AND JUNE 27TH, 1966, BUT DID NOT APPEAR AT EITHER OF THE HEARINGS.

3. AT THE CONTINUATION OF THE HEARING ON JUNE 28, 1966, COUNSEL FOR THE RESPONDENT INFORMED THE BOARD THAT THE RESPONDENT WAS DROPPING THE PLEA THAT THE COLLECTIVE AGREEMENT REFERRED TO ABOVE IN (A), WAS A BAR TO THIS APPLICATION.

4. IN THESE CIRCUMSTANCES THE QUESTION AS TO WHETHER THE SAID COLLECTIVE AGREEMENT CONSTITUTES A BAR TO THE APPLICATION IS NO LONGER AN ISSUE IN THESE PROCEEDINGS.

5. THE RESPONDENT BY LETTER DATED JUNE 10, 1966 CHALLENGED A RULING OF THE BOARD'S EXAMINER, APPOINTED MAY 12, 1966, DURING HIS INQUIRY INTO THE DUTIES AND RESPONSIBILITIES OF ONE TONY FRANCO. ARGUMENT WAS ADDRESSED TO THE BOARD BY THE PARTIES ON THIS MATTER AT THE HEARING HELD ON JUNE 27, 1966.

THE PROPOSED QUESTION DEALT WITH WHAT THE WITNESS WAS DOING SUBSEQUENT TO THE DATE OF THE MAKING OF THE APPLICATION. WHILE IT IS TRUE THAT IN DETERMINING WHETHER AN EMPLOYEE IS OR IS NOT PART OF MANAGEMENT THE BOARD LOOKS TO THAT PERSON'S DUTIES AND RESPONSIBILITIES AS AT THE DATE OF AN APPLICATION FOR CERTIFICATION AND NOT AT CHANGES IN SUCH MATTERS SUBSEQUENT TO THAT DATE, WE AGREE THAT FOR THE PURPOSE OF SHOWING A PATTERN OR AS PUT BY COUNSEL FOR THE RESPONDENT, "A FLOW", EVENTS BOTH BEFORE AND AFTER SUCH DATE MAY BE MATERIAL. THE WEIGHT TO BE ACCORDED SUCH TESTIMONY IS OF COURSE A MATTER FOR ARGUMENT AT THE PROPER TIME.

ACCORDINGLY, THE EXAMINER IS DIRECTED TO RECONVENE HIS INQUIRY FOR THE PURPOSE OF PERMITTING THE RESPONDENT TO PUT THE QUESTION AND RELATED MATTERS REFERRED TO IN ITS LETTER OF JUNE 10, 1966, TO TONY FRANCO.

6. BY LETTER DATED MAY 20, 1966 THE APPLICANT NOTIFIED THE BOARD OF ITS INTENTION TO ADDUCE CERTAIN EVIDENCE RESPECTING AN ALLEGED TELEPHONE CALL TO MR. LEONARD EDEN. THE APPLICANT FILED A SIMILAR LETTER IN THE VILLAGE CONTRACTORS' CASE, BOARD FILE #11448-65-R, AND IT WAS AGREED BY THE PARTIES THAT THEIR REPRESENTATIONS ON THIS MATTER IN THE VILLAGE CONTRACTORS' CASE WOULD APPLY IN THIS CASE.

THIS MATTER HAS NOW BEEN DEALT WITH IN THE VILLAGE CASE IN PARAGRAPH 2 OF A DECISION DATED JUNE 29, 1966. OUR VIEWS AS SET OUT THEREIN APPLY TO THIS CASE AND FOR THE REASONS SET OUT IN THE SAID PARAGRAPH 2 WE FIND THAT IT IS PREMATURE TO RULE ON THE ADMISSIBILITY OF THE MATTER REFERRED TO IN THE APPLICANT'S LETTER IN THIS CASE, DATED MAY 20, 1966.

11631-66-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. JOHNSON-KIEWIT SUBWAY CORPORATION (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: THOMAS LEES APPEARING FOR THE APPLICANT,
G. W. HATELY AND ALFRED MUSCARI APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: (JUNE 29, 1966)

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.
3. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT ALLEGES THAT THERE WERE TWO TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT ON THE DATE OF THE MAKING OF THE APPLICATION WHEREAS THE RESPONDENT SUBMITS THAT THERE WAS ONLY ONE SUCH PERSON IN ITS EMPLOY ON THAT DATE, NAMELY, APRIL 7, 1966.

THE EVIDENCE ESTABLISHES THAT THE EMPLOYEE IN DISPUTE, ONE BRUNO PALU, WAS EMPLOYED BY THE RESPONDENT AS A TRUCK DRIVER UNTIL "ROUND THE END OF JANUARY" AT WHICH TIME HE INJURED HIS ARM AND WAS UNABLE TO DRIVE. HE WAS THEN EMPLOYED AS A WATCHMAN BY THE RESPONDENT AND AS SUCH EARNED 90 TO 95 CENTS AN HOUR LESS THAN HE HAD EARNED AS A TRUCK DRIVER. LATER HE ATTEMPTED ON SEVERAL OCCASIONS TO DRIVE A TRUCK BUT WAS UNABLE TO DO SO.

ON THE NIGHT OF APRIL 6 - 7, HE WORKED AS A WATCHMAN BUT WENT HOME ABOUT 1:00 A.M., EARLIER THAN USUAL. HE CAME INTO WORK AT 8:00 A.M. ON THE MORNING OF APRIL 7TH AND DROVE A TRUCK FOR A SUBSTANTIAL PART OF THE DAY. APPARENTLY HE ALSO DID SOME ODD JOBS UNRELATED TO DRIVING. AS A RESULT OF DRIVING THAT DAY HIS ARM BECAME SORE.

PALU CAME INTO WORK ON FRIDAY, APRIL 8TH AND SATURDAY, APRIL 9TH TO PERFORM HIS REGULAR WATCHMAN'S DUTIES. HE DID NOT DRIVE ON THOSE TWO DAYS. REGARDLESS OF WHAT HE WAS DOING DURING THE WEEK HE WAS PAID FOR SIXTY HOURS AT THE WATCHMAN'S RATE OF PAY UP TO APRIL 11, 1966. ON APRIL 11, PALU WENT BACK TO WORK AS A TRUCK DRIVER.

IN CONSTRUCTION INDUSTRY CASES IT HAS BEEN THE PRACTICE OF THE BOARD WHERE EMPLOYEES ENGAGE IN THE WORK OF DIFFERENT CRAFTS (AND WHERE THEY ARE PAID ONLY ONE RATE) TO CHARACTERIZE THE CRAFT IN WHICH THEY ARE EMPLOYED FOR A MAJORITY OF THEIR TIME AS THE ONE GOVERNING THEIR STATUS ON AN APPLICATION FOR CERTIFICATION. SEE, FOR EXAMPLE, O. J. GAFFNEY LIMITED, O.L.R.B. MONTHLY REPORT, AUGUST, 1964, P. 233; MCMNAMARA CONSTRUCTION OF ONTARIO LIMITED, O.L.R.B. MONTHLY REPORT, DECEMBER, 1964, P. 419; NEDAN FORMING COMPANY LIMITED, O.L.R.B. MONTHLY REPORT, MAY, 1965, P. 100.

IT IS CLEAR ON EXAMINING THESE AND OTHER CASES THAT WHEN THE BOARD SPEAKS OF "EMPLOYED FOR A MAJORITY OF THEIR TIME" REFERENCE IS BEING MADE NOT TO EMPLOYMENT ON THE DATE OF THE MAKING OF THE APPLICATION BUT, RATHER, TO A PERIOD OF TIME LEADING UP TO THE DATE OF THE APPLICATION. THE CASES HOWEVER DO NOT REFER TO ANY FIXED PERIOD SUCH AS TWO WEEKS OR A MONTH PRIOR TO THE APPLICATION. JUST HOW FAR BACK THE BOARD WILL GO DEPENDS ON THE PARTICULAR CIRCUMSTANCES OF THE INDIVIDUAL CASE.

IN APPLYING THE ABOVE PRINCIPLES TO THE FACTS OF THIS CASE IT IS CLEAR THAT IN CHARACTERIZING THE STATUS OF PALU IT MATTERS NOT WHETHER HE WORKED ON APRIL 7, 4 OR 6 OR 7 OR 10 HOURS AS A TRUCK DRIVER. THE QUESTION IS IN WHAT WORK WAS HE EMPLOYED FOR A MAJORITY OF HIS TIME. ON THE FACTS SET OUT ABOVE WE HAVE NO HESITATION IN FINDING THAT FOR THE PURPOSES OF THIS APPLICATION PALU MUST BE REGARDED AS A WATCHMAN. THAT BEING THE CASE, ON APRIL 7TH, 1966, THERE WAS ONLY ONE EMPLOYEE IN THE BARGAINING UNIT PROPOSED BY THE APPLICANT. IT FOLLOWS THAT HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) THERE IS NO APPROPRIATE BARGAINING UNIT AND THE APPLICATION MUST THEREFORE BE AND IS ACCORDINGLY DISMISSED.

11735-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. OTIS ELEVATOR COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
D. B. ARCHER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: D. M. STOREY, S. COOKE, B. DES ROCHES
APPEARING FOR THE APPLICANT, D. CHURCHILL-SMITH, E. GLASS, W. J. KACUR
APPEARING FOR THE RESPONDENT, C. E. WILCOX APPEARING FOR THE OBJECTORS,
C. K. ELEVELD APPEARING ON HIS OWN BEHALF.

DECISION OF THE BOARD: (JUNE 9, 1966)

1. THE APPLICANT APPLIED TO BE CERTIFIED FOR A BARGAINING UNIT OF EMPLOYEES OF THE RESPONDENT AT HAMILTON WHICH INCLUDED 637 EMPLOYEES ON THE DATE THE APPLICATION WAS MADE. THE APPLICANT FILED 412 MEMBERSHIP DOCUMENTS FOR PERSONS INCLUDED IN THE BARGAINING UNIT ON THAT DATE.

2. THERE WAS ALSO FILED IN THIS MATTER SEVEN DOCUMENTS SIGNED BY A TOTAL OF 108 PERSONS WHO OPPOSED THE APPLICATION, OF WHOM THE APPLICANT CLAIMED TWELVE AS MEMBERS. THE BOARD ADVISED THE PARTIES AT THE HEARING THAT EVEN IF FULL EFFECT WERE GIVEN TO SUCH DOCUMENTS AND THE APPLICANT'S MEMBERSHIP POSITION WAS PLACED IN DOUBT WITH RESPECT TO THE TWELVE MEMBERS WHO SIGNED THE DOCUMENTS, THE APPLICANT'S MEMBERSHIP POSITION WOULD NOT BE SUBSTANTIALLY AFFECTED AND IT WAS NOT NECESSARY FOR THE BOARD TO INQUIRE INTO THE ORIGATION AND CIRCULATION OF THE SEVEN DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION.

3. IN ADDITION MR. ELEVELD, AN EMPLOYEE OF THE RESPONDENT IN THE BARGAINING UNIT, ALSO FILED A STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS WHICH CONTAINED VAGUE CHARGES OF UNFAIR CONDUCT WHICH WERE NOT SUPPORTED BY PARTICULARS.

4. THE APPLICANT ARGUED THAT MR. ELEVELD SHOULD NOT BE PERMITTED TO ADDUCE EVIDENCE IN SUPPORT OF HIS ALLEGATIONS OF UNFAIR CONDUCT BECAUSE HE HAD NOT PROVIDED PARTICULARS AS REQUIRED BY SECTION 48 OF THE BOARD'S RULES OF PROCEDURE. THE BOARD RULED AT THE HEARING THAT SINCE THE APPLICANT HAD NOT REQUESTED PARTICULARS PRIOR TO THE HEARING MR. ELEVELD SHOULD BE PERMITTED TO SET FORTH IN WRITING, PARTICULARS OF HIS ALLEGATIONS DURING A RECESS OF THE BOARD CALLED FOR THAT PURPOSE. IF THE APPLICANT UPON EXAMINING THE PARTICULARS WAS TAKEN BY SURPRISE, THE APPLICANT WOULD BE ENTITLED TO AN ADJOURNMENT IN ORDER THAT IT WOULD HAVE THE OPPORTUNITY TO PROPERLY PREPARE ITSELF TO MEET THE CHARGES OF UNFAIR CONDUCT MADE BY MR. ELEVELD.

5. MR. ELEVELD PROVIDED PARTICULARS OF HIS ALLEGATIONS AS REQUIRED AND THE APPLICANT INDICATED THAT IT WAS PREPARED TO PROCEED WITHOUT THE NECESSITY OF AN ADJOURNMENT.

6. MR. ELEVELD TESTIFIED THAT CERTAIN THINGS OCCURRED BOTH AT HIS HOME AND AT WORK WHICH, IF THEY COULD BE ATTRIBUTED TO THE APPLICANT, MIGHT HAVE AFFECTED THE RESULT OF THIS APPLICATION. HOWEVER, MR. ELEVELD COULD NOT IDENTIFY THE PERPETRATOR OR PERPETRATORS OF ANY OF THE THINGS OF WHICH HE COMPLAINED.

7. THERE WAS NO EVIDENCE WHICH TIED THE APPLICANT UNION, ITS OFFICIALS OR ORGANIZERS WITH THE EVENTS COMPLAINED OF. ON THE CONTRARY THE APPLICANT'S OFFICIAL WHO WAS IN CHARGE OF THE ORGANIZING CAMPAIGN TESTIFIED THAT HE HAD ISSUED INSTRUCTIONS TO ALL THE APPLICANT'S ORGANIZERS TO THE EFFECT THAT IN THEIR ATTEMPT TO PERSUADE EMPLOYEES TO JOIN THE UNION, THEY SHOULD REFRAIN FROM ANY THREATS, COERCION OR INTIMIDATION.

8. THE EVENTS OF WHICH MR. ELEVELD COMPLAINED WERE ALL DIRECTED AGAINST HIM PERSONALLY. HIS EVIDENCE DID NOT SUGGEST THAT THESE EVENTS WERE PART OF A PATTERN DIRECTED AGAINST EMPLOYEES WHO OPPOSED THE APPLICANT'S ATTEMPT TO ORGANIZE. IT IS NOT WITHOUT INTEREST TO NOTE THAT MR. SILCOX WHO REPRESENTED 108 PERSONS WHO SIGNED A DOCUMENT IN OPPOSITION TO THE APPLICATION STATED THAT HE HAD NO CHARGES OF UNFAIR CONDUCT TO MAKE AGAINST THE APPLICANT AND HE HAD NO EVIDENCE TO OFFER IN SUPPORT OF MR. ELEVELD'S CHARGES.

9. IF THE INDIVIDUAL EVENTS OF WHICH MR. ELEVELD COMPLAINED HAD ANY RELATION TO EACH OTHER, THERE IS NOTHING IN HIS EVIDENCE WHICH WOULD CAUSE THE BOARD TO DECIDE THAT THE APPLICANT SHOULD BE HELD RESPONSIBLE FOR THEIR COMMISSION.

10. WHILE THE EVIDENCE IS OPEN TO CONCLUSION THAT THE EVENTS MAY HAVE BEEN PERPETRATED BY A FELLOW EMPLOYEE WHOSE WRATH WAS INCURRED BY MR. ELEVELD (HE ADMITTED THAT HE WAS ON BAD TERMS WITH THREE OR FOUR EMPLOYEES IN THE PLANT AND HE ALSO ACKNOWLEDGED THAT HE TOLD HIS BEST FRIEND THAT HE "MUST BE OUT OF HIS MIND" TO SUPPORT THE UNION) THERE IS NOTHING BEFORE US THAT WOULD INDICATE THAT SUCH AN EMPLOYEE WAS ACTING ON BEHALF OF THE APPLICANT.

11. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD THEREFORE FINDS THAT THERE IS NO SUBSTANCE IN MR. ELEVELD'S ALLEGATIONS THAT THE APPLICANT IS GUILTY OF ANY UNFAIR CONDUCT.

12. MR. ELEVELD ALSO ALLEGED THAT HE HAD BEEN INFORMED THAT A FELLOW EMPLOYEE HAD NOT PAID ANY MONEY ON ACCOUNT OF HIS INITIATION FEE WHEN HE SIGNED AN APPLICATION FOR MEMBERSHIP CARD. THE BOARD, FOLLOWING ITS USUAL PRACTICE, INSTRUCTED ONE OF ITS OFFICERS TO INTERVIEW THE EMPLOYEE CONCERNED TO ASCERTAIN WHETHER FURTHER INQUIRY INTO THE ALLEGATION OF NON-PAY WOULD BE REQUIRED. THE EMPLOYEE SIGNED A STATEMENT FOR THE BOARD'S OFFICER WHICH INDICATED THAT HE HAD PAID \$1.00 ON ACCOUNT OF INITIATION FEE TO ANOTHER EMPLOYEE WHO WAS ACTING AS A COLLECTOR FOR THE APPLICANT UNION AND THAT THIS TRANSACTION WAS WITNESSED BY A THIRD PERSON. THE BOARD THEREFORE FINDS THAT FURTHER INQUIRY INTO THE ALLEGATION OF NON-PAY IS NOT REQUIRED IN THESE CIRCUMSTANCES.

13. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

14. HAVING REGARD TO THE AGREEMENT OF THE PARTIES THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT 440 VICTORIA AVENUE NORTH, HAMILTON, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, SECURITY GUARDS, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

15. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE PERSONS CLASSIFIED BY THE RESPONDENT AS TECHNICAL STAFF ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF.

16. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

17. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11758-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 79 (APPLICANT) v.
THE METROPOLITAN TORONTO HOUSING COMPANY LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND F. W. MURRAY.

APPEARANCES AT HEARING: L. A. MACLEAN, H. WRIGHTMAN, W. HIGGINS AND
D. A. McEWEN FOR THE APPLICANT, AND G. W. NOBLE AND L. R. FLEMMING
FOR THE RESPONDENT.

DECISION OF THE BOARD: (JUNE 20, 1966)

1. THE NAME "THE METROPOLITAN HOUSING COMPANY LTD." APPEARING IN THE
STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED
TO READ: "THE METROPOLITAN TORONTO HOUSING COMPANY LIMITED".
2. THIS IS AN APPLICATION FOR CERTIFICATION.
3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING
OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.
4. THE APPLICANT APPLIES FOR CERTIFICATION AS BARGAINING AGENT FOR
EMPLOYEES IN A BARGAINING UNIT DESCRIBED BY IT AS FOLLOWS:-

ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN
TORONTO SAVE AND EXCEPT DIETICIAN, PERSONS ABOVE
THE RANK OF DIETICIAN EMPLOYEES INCLUDED IN THE
LOCAL 43 BARGAINING UNIT AND OFFICE STAFF.

5. THE LOCAL 43 BARGAINING UNIT REFERRED TO ABOVE IS DESCRIBED IN PART
IN THE RECOGNITION CLAUSE OF A COLLECTIVE AGREEMENT MADE BETWEEN THE
METROPOLITAN TORONTO HOUSING COMPANY LIMITED, THE RESPONDENT HEREIN, AND THE
CIVIC EMPLOYEES' UNION No. 43. THE AGREEMENT RUNS FROM THE 1ST OF APRIL, 1964,
TO AND INCLUDING MARCH 31ST, 1966, AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO
NOTICE. THE RECOGNITION CLAUSE READS AS FOLLOWS:-

1. (A) THAT THE COMPANY RECOGNIZES LOCAL 43 AS
THE SOLE BARGAINING AGENT FOR COLLECTIVE
BARGAINING PURPOSES FOR ALL EMPLOYEES FROM
TIME TO TIME OF THE COMPANY WHO MAY OCCUPY
THE POSITIONS SET FORTH IN SCHEDULE 1 ANNEXED
HERETO AND FORMING PART OF THIS AGREEMENT, SUCH
GROUP OF EMPLOYEES HEREINAFTER BEING REFERRED
TO AS "THE 43 UNIT".

6. THE CLASSIFICATIONS SOUGHT TO BE COVERED IN THE PRESENT APPLICATION
WERE NOT IN EXISTENCE AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO
AND, IN FACT, ONLY CAME INTO BEING EARLY IN THE PRESENT YEAR. THEY DO NOT,
THEREFORE, APPEAR AS POSITIONS SET FORTH IN SCHEDULE 1 ANNEXED TO THE AGREE-
MENT.

7. IT IS THE APPLICANT'S POSITION THAT SINCE SCHEDULE 1 OF THE COLLECTIVE AGREEMENT DOES NOT COVER THE CLASSIFICATIONS IN THE BARGAINING UNIT IT SEEKS, AND THAT SINCE LOCAL 43 HAS NOT BARGAINED ON BEHALF OF THE OCCUPANTS OF THESE CLASSIFICATIONS AND HAS NOT APPEARED AT THE HEARING ALTHOUGH DULY NOTIFIED, IT, THE APPLICANT, IS ENTITLED TO BE CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEE INCUMBENTS OF THE NEW CLASSIFICATIONS. THE COLLECTIVE AGREEMENT, HOWEVER, CONTEMPLATES AND MAKES PROVISION FOR THE INTRODUCTION OF NEW OR CHANGED CLASSIFICATIONS. IT PROVIDES THE MACHINERY FOR ARRIVING AT A WAGE RATE FOR SUCH NEW OR CHANGED CLASSIFICATIONS. UNDER THE HEADING "WAGES" CLAUSE 6 (c) READS AS FOLLOWS:-

THAT, THE COMPANY MAY SET RATES OF PAY FOR ANY NEW OR CHANGED CLASSIFICATIONS AND SHALL ADVISE THE UNION OF SUCH NEW OR CHANGED CLASSIFICATION AND THAT IF THE UNION OR ANY EMPLOYEE IS OF THE OPINION THAT THE RATE OF PAY IS UNFAIR OR IMPROPER, THE UNION OR THE EMPLOYEE, AS THE CASE MAY BE, SHALL HAVE THE PRIVILEGE OF FILING A GRIEVANCE IN ACCORDANCE WITH THE GRIEVANCE PROCEDURE AS SET FORTH IN CLAUSE 18 HEREOF.

THIS CLAUSE CLEARLY INDICATES THAT THE BARGAINING UNIT OUTLINED IN CLAUSE 1 (A) OF THE AGREEMENT IS NOT INTENDED TO BE STATIC, BUT RATHER IS TO INCLUDE SUCH NEW AND CHANGED CLASSIFICATIONS AS MAY BE INTRODUCED BY THE COMPANY FROM TIME TO TIME.

8. NOTHING IN THE WORDING OF CLAUSE 6 (c) ATTEMPTS TO LIMIT OR CONFINE THE NEW CLASSIFICATIONS TO ANY PARTICULAR CATEGORY OR KIND OF WORK. IT FOLLOWS, THEREFORE, AND THE BOARD SO FINDS, THAT THE CLASSIFICATIONS WHICH THE APPLICANT SEEKS TO EMBRACE IN ITS PROPOSED BARGAINING UNIT FALL WITHIN THE INTENT AND SCOPE OF CLAUSE 6 (c) OF THE COLLECTIVE AGREEMENT AND THAT THEY FORM AN ACCRETION TO AND A PART OF WHAT HAS BEEN REFERRED TO AS THE LOCAL 43 BARGAINING UNIT.

9. FURTHERMORE, SINCE THE NEW CLASSIFICATIONS CAME INTO BEING ONLY AT THE COMMENCEMENT OF THE CURRENT YEAR AND TOWARDS THE END OF THE TERM OF THE COLLECTIVE AGREEMENT, NOTHING TURNS UPON THE FACT THAT LOCAL 43 HAS NOT BARGAINED ON BEHALF OF THE EMPLOYEES OCCUPYING THEM. NOR CAN ADVERSE SIGNIFICANCE BE ATTACHED TO THE ABSENCE OF REPRESENTATIVES OF LOCAL 43 AT THE HEARING, SINCE THE PROPOSED BARGAINING UNIT SPECIFICALLY EXCLUDES "EMPLOYEES INCLUDED IN THE LOCAL 43 BARGAINING UNIT". IN OTHER WORDS, IN THE CIRCUMSTANCES OBTAINING HERE, THERE CAN BE NO VALID QUESTION OF A FAILURE OR REFUSAL BY LOCAL 43 TO BARGAIN ON BEHALF OF THE EMPLOYEES IN THE NEW CLASSIFICATIONS. IT MIGHT NOT BE INAPPROPRIATE TO ADD AT THIS POINT THAT SECTION 6(2) OF THE LABOUR RELATIONS ACT HAS NO APPLICATION HEREIN.

10. IN THE LIGHT OF THE FOREGOING, THE BOARD FINDS THAT THE EMPLOYEES IN THE BARGAINING UNIT SOUGHT BY THE APPLICANT ARE PRESENTLY WITHIN THE BARGAINING UNIT REPRESENTED BY THE CIVIC EMPLOYEES' UNION LOCAL 43 AND DO NOT CONSTITUTE A SEPARATE UNIT APPROPRIATE FOR COLLECTIVE BARGAINING.

11. THE APPLICATION IS THEREFORE DISMISSED.

11781-66-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. HOWARD BIENVENUE INCORPORATED (RESPONDENT).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
H. F. IRWIN AND D. W. FORGIE.

APPEARANCES AT THE HEARING: ALBERT LALONDE APPEARING FOR THE APPLICANT
AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: (JUNE 16, 1966)

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
2. THE APPLICANT IS APPLYING FOR A BARGAINING UNIT OF EMPLOYEES OF THE RESPONDENT WHICH ENCOMPASSES THE WHOLE OF THE DISTRICT OF COCHRANE. IN SUPPORT OF THE GEOGRAPHIC AREA WHICH IT IS SEEKING THE APPLICANT CITED A NUMBER OF CERTIFICATES ISSUED BY THE BOARD FOR BUSH OPERATIONS IN WHICH THE DESCRIPTION OF THE BARGAINING UNIT COVERED THE DISTRICT OF COCHRANE OR THE NORTH COCHRANE AREA. WE NOTE WITH ONE EXCEPTION THE CERTIFICATES CITED WERE ISSUED BY THE BOARD ABOUT A DECADE AGO. IN THE INTERVENING YEARS IT HAS BEEN THE ALMOST INVARIABLE PRACTICE OF THE BOARD IN APPLICATIONS COVERING WOODS OPERATIONS TO CONFINE THE GEOGRAPHIC AREA OF THE BARGAINING UNIT TO THE TOWNSHIP OR TOWNSHIPS IN WHICH THE RESPONDENT IS OPERATING AS OF THE DATE OF THE APPLICATION AND TO THOSE TOWNSHIPS IMMEDIATELY ADJACENT THERETO. ALTERNATIVELY, IN SOME INSTANCES THE BOARD HAS ISSUED CERTIFICATES COVERING AN AREA SPECIFIED BY CROWN LICENCES OR PERMITS ISSUED BY THE DEPARTMENT OF LANDS AND FORESTS. ON THE BASIS OF THE LIMITED INFORMATION PROVIDED BY THE APPLICANT RELATING TO THE OPERATIONS OF THE RESPONDENT THERE ARE NO SPECIAL CIRCUMSTANCES WHICH WOULD CAUSE THE BOARD TO DEPART FROM ITS USUAL POLICY IN THE INSTANT CASE.
3. THE BOARD ACCORDINGLY FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN ITS WOODS OPERATIONS IN THE TOWNSHIPS OF LAMPLUGH, FRECHEVILLE, HOLLOWAY AND HARKER AND THOSE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND SCALERS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11808-66-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS (APPLICANT) v. CAMPBELL MOTORS (OTTAWA) LTD. (RESPONDENT) v. CROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
F. W. MURRAY AND D. FORGIE.

APPEARANCES AT HEARING: P. T. GALLIGAN AND JACK WYNTER FOR THE APPLICANT,
KENNETH A. MURCHISON, Q.C., FOR THE RESPONDENT, AND HANS VITAL, HELMUT
REICHINGER AND R. BARNES FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (JUNE 21, 1966)

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.
2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, NEW AND USED CAR SALESMEN AND SERVICE SALESMEN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
3. TWO STATEMENTS OF DESIRE (HEREINAFTER CALLED PETITIONS) EXPRESSING OPPOSITION TO THE APPLICATION WERE FILED WITH THE BOARD. THERE ARE NINETEEN NAMES ON ONE PETITION, IDENTIFIED AS P. 1. ON THE OTHER PETITION, P. 2, THERE ARE EIGHT NAMES. THERE IS A TOTAL OF 56 NAMES ON THE LISTS SUPPLIED BY THE EMPLOYER. THE APPLICANT FILED 47 MEMBERSHIP CARDS WHICH STOOD UP. THERE IS, WHAT IS TERMED AN "OVERLAP" OF NINETEEN NAMES. THAT IS NINETEEN OF THE PERSONS WHO SIGNED THE PETITIONS WERE ALSO MEMBERS OF THE APPLICANT UNION. IN LIGHT OF THE EVIDENCE IT IS PLAIN THAT THE BOARD IS MAKING NO DISCLOSURE AS TO UNION MEMBERSHIP NOT PREVIOUSLY KNOWN TO THE PARTIES IN STATING THAT THE OVERLAP WAS MADE UP ENTIRELY OF THE NAMES ON THE P. 1 PETITION. IF THE BOARD WERE TO FIND THAT THE PETITIONS WEAKENED OR QUALIFIED THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT, THERE WOULD BE UNCONTESTED MEMBERSHIP EVIDENCE FOR LESS THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AND A VOTE WOULD BE DIRECTED.
4. THE BOARD ACCORDINGLY MADE INQUIRY INTO THE ORIGATION OF THE PETITIONS AND THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED. THE EVIDENCE CLEARLY AND UNEQUIVOCALLY ESTABLISHED, AND THE BOARD SO FINDS, THAT THE SERVICE MANAGER OF THE RESPONDENT, TONY SCHNURR, SO INTERFERED WITH AND EXERTED SUCH PRESSURE UPON THREE OF THE SIGNATORIES TO THE P. 1 PETITION AS TO COMPLETELY NEGATE ANY POSSIBILITY OF THEIR SIGNATURES HAVING BEEN PLACED ON THE PETITION OF THEIR OWN FREE WILL AND VOLITION. NO WEIGHT WHATSOEVER CAN BE GIVEN TO THESE THREE SIGNATURES SO THAT AT THE BEST, THAT IS WITHOUT GIVING CONSIDERATION AT THIS TIME TO OTHER EVIDENCE OF MANAGEMENT INFLUENCE AND INTERFERENCE, THE PETITIONS CANNOT BE FOUND TO HAVE A VALID OVERLAP OF MORE THAN SIXTEEN NAMES AND THIS ACCORDINGLY LEAVES UNCONTESTED MEMBERSHIP EVIDENCE OF MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT. THE BOARD THEREFORE FINDS THAT THE PETITIONS DO NOT WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS MATTER.
5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS

ACT AND THE BOARD'S RULES OF PROCEDURE.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11812-66-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) v. PETTAPIECE CARTAGE LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W. FULLER AND J. GINTY FOR THE APPLICANT,
T. F. STORIE AND R. C. PETTAPIECE FOR THE RESPONDENT, W. S. COOK, L. R.
GRANGER, H. TAYLOR, E. A. HUNT AND S. THORPE FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (JUNE 13, 1966)

1. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT.
2. THE RESPONDENT SUBMITS THAT THE BOARD IS WITHOUT JURISDICTION IN AS MUCH AS THE NATURE OF THE RESPONDENT'S OPERATIONS ARE SUCH AS TO BRING IT WITHIN THE EXCLUSIVE JURISDICTION OF THE PARLIAMENT OF CANADA. IN SUPPORT OF HIS SUBMISSION COUNSEL FOR THE RESPONDENT CITED A DECISION OF THE BOARD (BOARD FILE NO. 9690-64-M) DATED DECEMBER 11TH, 1964 IN WHICH THE BOARD FOUND THAT THE OPERATIONS OF THE RESPONDENT FELL WITHIN THE LEGISLATIVE JURISDICTION OF THE PARLIAMENT OF CANADA.
3. THE RESPONDENT STATES AND THE APPLICANT AGREES THAT THERE HAS BEEN NO CHANGE IN THE OPERATIONS OF THE RESPONDENT SINCE THE DATE OF THE ISSUING OF THE BOARD'S DECISION REFERRED TO IN PARAGRAPH 2.
4. IN VIEW OF THE BOARD'S DECISION OF DECEMBER 11TH, 1964 AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES THAT THERE HAS BEEN NO CHANGE IN THE NATURE OF THE RESPONDENT'S OPERATIONS SINCE THAT DATE, THE BOARD FINDS THAT IT IS WITHOUT JURISDICTION TO DEAL WITH THE INSTANT APPLICATION.
5. THE APPLICATION ACCORDINGLY IS DISMISSED.

11863-66-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. DROPE PAVING & CONSTRUCTION LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: I. J. THOMSON APPEARING FOR THE APPLICANT
AND J. B. ALLEN APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: (JUNE 30, 1966)

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

3. THE BARGAINING UNIT PROPOSED BY THE APPLICANT IN ITS APPLICATION APPEARS TO RELATE SOLELY TO TRUCK DRIVERS, ALTHOUGH IT IS POSSIBLE THAT IT MIGHT HAVE INCLUDED ONE OR TWO MECHANICS. IN ANY EVENT, THE LIST OF EMPLOYEES FILED BY THE RESPONDENT SHOWS ONLY TRUCK DRIVERS, LABOURERS AND PERSONS CLASSIFIED AS OPERATOR AND TRUCK DRIVER. THE PARTIES HAVE AGREED THAT PERSONS FALLING INTO THIS LAST CLASSIFICATION WOULD NOT FALL INTO THE UNIT PROPOSED BY THE APPLICANT ON THE DATE OF THE MAKING OF THE APPLICATION. THE APPLICANT PROPOSED THE EXCLUSION OF LABOURERS. IT FOLLOWS, THEREFORE, THAT IF WE ACCEPT THE RESPONDENT'S LIST, THE ONLY PERSONS LEFT IN THE UNIT PROPOSED BY THE APPLICANT ARE TRUCK DRIVERS.

THE APPLICANT HAS REQUESTED LEAVE TO AMEND ITS DESCRIPTION OF THE BARGAINING UNIT FROM AN ALL EMPLOYEE UNIT TO ONE DESCRIBED IN TERMS OF ALL TRUCK DRIVERS. THE RESPONDENT'S OBJECTION TO THIS REQUEST IS BASED MAINLY ON THE FACT THAT IT WOULD REQUIRE THE RESPONDENT TO BARGAIN WITH A NUMBER OF TRADE UNIONS WITH RESPECT TO SEVERAL BARGAINING UNITS. THE RESPONDENT, IT IS CLAIMED, IS A SMALL COMPANY AND WOULD PREFER TO BARGAIN FOR ALL ITS EMPLOYEES AT ONE TIME. THE FACT IS, HOWEVER, THAT THE OPERATING ENGINEERS HAVE ALREADY BEEN CERTIFIED FOR THEIR REGULAR CRAFT UNIT WITH RESPECT TO EMPLOYEES OF THE RESPONDENT. ADDITIONALLY, ORGANIZATION ALONG CRAFT LINES IS A WELL KNOWN FEATURE OF THE CONSTRUCTION INDUSTRY AND ONE RECOGNIZED BY THIS BOARD IN DETERMINING BARGAINING UNITS IN THIS FIELD.

WHILE THE APPLICANT HAS NEVER BEEN ACCORDED CRAFT STATUS BY THE BOARD, IT HAS DECIDED THAT A UNIT OF TRUCK DRIVERS IS AN APPROPRIATE UNIT WHERE THE EMPLOYER CONCERNED IS ENGAGED IN THE CONSTRUCTION INDUSTRY. SEE, FOR EXAMPLE, CEDARHURST PAVING Co. LIMITED, O.L.R.B. MONTHLY REPORT, DECEMBER, 1964, PAGE 442 AND K. J. BEAMISH CONSTRUCTION Co. LIMITED, O.L.R.B. MONTHLY REPORT, DECEMBER, 1964, PAGE 398. THERE IS NO QUESTION THAT THE RESPONDENT IS AN EMPLOYER WHICH OPERATES A BUSINESS IN THE CONSTRUCTION INDUSTRY WITHIN THE MEANING OF SECTION 90(A) OF THE LABOUR RELATIONS ACT.

HAVING REGARD, THEN, TO ALL OF THE ABOVE CONSIDERATIONS THE BOARD FINDS FURTHER THAT ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT ON THE DATE OF THE MAKING OF THE APPLICATION THERE WERE TEN TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT.

THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE

APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

INDEXED ENDORSEMENT - TERMINATION

11667-66-R: GERARD BELLEMARE (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (RESPONDENT) V. RAMSAY INDUSTRIES LIMITED (INTERVENER).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT HEARING: GERARD BELLEMARE AND DAVID CAIRNS FOR THE APPLICANT, ALBERT LALONDE AND MARK MCKENNY FOR THE RESPONDENT AND JAMES W. TOUHEY FOR THE INTERVENER.

DECISION OF THE BOARD: (JUNE 2, 1966)

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT, PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT. THE RESPONDENT WAS CERTIFIED ON MARCH 3RD, 1965, FOR A UNIT OF CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE INTERVENER.

2. THIS APPLICATION WAS MADE ON APRIL 19TH, 1966, AND THE LIST OF PERSONS IN THE EMPLOY OF THE INTERVENER ON THAT DATE DISCLOSES NO PERSONS CLASSIFIED AS CARPENTERS OR CARPENTERS' APPRENTICES. THE PERSONS WHOSE NAMES HAVE BEEN IDENTIFIED AS SUPPORTING THIS APPLICATION, HOWEVER, ARE AMONG THE PERSONS FOR WHOM THE RESPONDENT SUBMITTED EVIDENCE OF MEMBERSHIP AT THE TIME OF ITS APPLICATION FOR CERTIFICATION. IT WAS STATED BY COUNSEL FOR THE INTERVENER, AND NOT DENIED, THAT THE DUTIES OF THESE PERSONS HAVE NOT MATERIALLY CHANGED SINCE THE TIME OF THAT APPLICATION. IT WAS FURTHER STATED, HOWEVER, THAT IT IS IMPOSSIBLE TO DISTINGUISH THE DUTIES OF THESE PERSONS FROM THE DUTIES OF OTHER PERSONS IN THE EMPLOY OF THE INTERVENER.

3. IN OUR VIEW, IT IS NOT NOW OPEN TO THE RESPONDENT TO TAKE THE POSITION THAT THE PERSONS SUPPORTING THIS APPLICATION DO NOT COME WITHIN THE BARGAINING UNIT WHICH IT REPRESENTS, THESE BEING AMONG THE PERSONS ON WHOSE MEMBERSHIP IT RELIED AT THE TIME OF ITS CERTIFICATION. WHILE THESE INDIVIDUALS SHOULD THEREFORE BE CONSIDERED AS COMING WITHIN THE BARGAINING UNIT FOR THE PURPOSE OF THIS APPLICATION, THE FACTS SET OUT IN PARAGRAPH 2 ABOVE SHOW THAT THERE ARE OTHER EMPLOYEES WHO MUST LIKEWISE BE CONSIDERED AS COMING WITHIN THIS UNIT FOR THE PURPOSE OF THIS APPLICATION. INDEED, THE INTERVENER'S LIST INDICATES A TOTAL OF 19 SUCH PERSONS. IT IS CLEAR THEN THAT THIS APPLICATION WOULD HAVE TO BE DISMISSED EITHER BECAUSE THERE ARE NO CARPENTERS IN THE EMPLOY OF THE INTERVENER (AND THE RESPONDENT CANNOT NOW TAKE THIS POSITION) OR BECAUSE IT HAS NOT BEEN ESTABLISHED THAT "NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING" THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.

4. THE APPLICATION IS DISMISSED.

INDEXED ENDORSEMENT - PROSECUTION

11721-66-U: INTERNATIONAL LADIES GARMENT WORKERS' UNION (APPLICANT) v. FORMFIT INTERNATIONAL, S. A. (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: J. OSLER, Q.C., AND J. W. KITTS FOR THE APPLICANT, S. E. DINSDALE AND J. C. COWAN FOR THE RESPONDENT.

DECISION OF J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER F. W. MURRAY: (JUNE 23, 1966)

1. THIS IS AN APPLICATION FOR CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR AN ALLEGED VIOLATION OF SECTION 48 OF THE LABOUR RELATIONS ACT.

2. THE EVIDENCE ESTABLISHES THAT ON OR ABOUT MARCH 28TH, 1966, THE RESPONDENT CAUSED LETTERS TO BE DELIVERED TO CERTAIN OF ITS EMPLOYEES. THESE LETTERS DEALT WITH THE MATTER OF THE APPLICANT'S ORGANIZING CAMPAIGN AND IN THE LETTERS THE RESPONDENT ASKED ITS EMPLOYEES TO CONSIDER CAREFULLY THE QUESTION OF JOINING THE APPLICANT TRADE UNION AND SUGGESTED THAT THE INTERESTS OF EMPLOYEES WOULD BEST BE SERVED BY THEIR NOT JOINING THE TRADE UNION. THE LETTERS WERE WRITTEN IN EITHER ENGLISH OR ITALIAN ACCORDING TO THE LANGUAGE OF THE RECIPIENT. APPROXIMATELY 80 PER CENT OF THE LETTERS WERE IN ITALIAN AND THE REST WERE IN ENGLISH. THE APPLICANT LAYS PARTICULAR STRESS UPON ONE STATEMENT APPEARING IN THE ITALIAN LETTER, NAMELY, "L'UNIONE D'INTERESSATA SOLTANTO NELLA VOSTRA QUOTA ED IL LORO VANTAGGIO" WHICH MAY BE TRANSLATED AS "THE UNION IS INTERESTED ONLY IN YOUR DUES AND ITS OWN ADVANTAGE". THIS STATEMENT WAS INTENDED TO BE A TRANSLATION OF A STATEMENT "THE UNION IS INTERESTED IN DUES AND THEIR OWN SECURITY" WHICH APPEARED IN THE ENGLISH LETTER. THE TRANSLATION IS NOT CORRECT ALTHOUGH THE RESPONDENT DID TAKE REASONABLE PRECAUTIONS WITH RESPECT TO THE TRANSLATION. IN ANY EVENT, THE RESPONDENT DID PUBLISH THE LETTER IN ITALIAN CONTAINING THE STATEMENT REFERRED TO.

3. SECTION 48 OF THE LABOUR RELATIONS ACT IS AS FOLLOWS:

"NO EMPLOYER OR EMPLOYERS' ORGANIZATION AND NO PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION SHALL PARTICIPATE IN OR INTERFERE WITH THE FORMATION, SELECTION OR ADMINISTRATION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION OR CONTRIBUTE FINANCIAL OR OTHER SUPPORT TO A TRADE UNION, BUT NOTHING IN THIS SECTION SHALL BE DEEMED TO DEPRIVE AN EMPLOYER OF HIS FREEDOM TO EXPRESS HIS VIEWS SO LONG AS HE DOES NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE."

IT IS THE APPLICANT'S CONTENTION THAT HAVING REGARD PARTICULARLY TO THE STATEMENT REFERRED TO ABOVE, THE LETTER DISTRIBUTED TO THE EMPLOYEES OF THE RESPONDENT CONSTITUTES UNDUE INFLUENCE AND INTERFERES WITH THE SELECTION OF A TRADE UNION BY EMPLOYEES. IN OUR OPINION, THIS CONTENTION FAILS. NOTHING IN THE

LETTER OF IN THE STATEMENT PARTICULARLY COMPLAINED OF COULD BE TAKEN AS SEEKING TO INFLUENCE EMPLOYEES EXCEPT BY THE EXPRESSION OF THE EMPLOYER'S OPINION. IT COULD NOT BE TAKEN THAT THE EMPLOYEES' JOBS, WAGES OR WORKING CONDITIONS WERE IN ANY WAY IN JEOPARDY. INDEED, COUNSEL FOR THE APPLICANT ADMITTED THERE WAS NO ELEMENT OF COERCION, INTIMIDATION, THREAT OR PROMISE IN THE ACTION OF THE RESPONDENT. HAVING REGARD TO THE PARTICULAR STATEMENT AND TO ITS CONTEXT, IT IS OUR VIEW THAT THE ACTION OF THE RESPONDENT EMPLOYER CONSTITUTED AN EXPRESSION OF ITS VIEWS WITHIN THE MEANING OF THE PROVISIO TO SECTION 48.

4. THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER D. B. ARCHER:

I DISSENT.

THE FACTS ON WHICH THE APPLICANT RELIES ARE ACCURATELY STATED IN THE MAJORITY DECISION. THE QUESTION IS, DOES THE ITALIAN PAMPHLET REPRESENT AN UNFAIR LABOUR PRACTICE, IS IT COERCIVE IN ITS INTENT? THIS QUESTION IS A DIFFICULT ONE TO ANSWER. THERE IS AN ATTITUDE THAT SUGGESTS ANY EMPLOYER SPEECH OPPOSING THE UNION IS COERCIVE, PER SE, BECAUSE OF THE EMPLOYER'S ECONOMIC POWER OVER THE EMPLOYEES. THE U.S. SUPREME COURT HAS SUGGESTED THAT "SLIGHT SUGGESTIONS AS TO THE EMPLOYER'S CHOICE BETWEEN UNIONS MIGHT HAVE A TELLING EFFECT AMONG MEN WHO KNOW THE CONSEQUENCES OF INCURRING MANAGEMENT'S DISPLEASURE".

A LEAFLET BY ITSELF MAY NOT SEEM MUCH, BUT WHEN APPLIED TO THE TOTALITY OF THE CONDUCT OF THE EMPLOYER MAY ASSUME QUITE IMPORTANT PROPORTIONS. IN THIS CASE THE EMPLOYER, NOT SATISFIED WITH AN ENGLISH LEAFLET, WENT TO THE TROUBLE TO HAVE THE ANTI-LABOUR DOCUMENT TRANSLATED INTO ITALIAN. HE MUST THEREFORE BE RESPONSIBLE FOR THE ITALIAN TRANSLATION AS INTERPRETED BY OUR BOARD INTERPRETER, AND CANNOT HIDE BEHIND THE FACT THAT HE MADE REASONABLE EFFORTS TO GET A PROPER TRANSLATION.

PROF. JOHN E. DROTNING, ASSISTANT PROFESSOR OF INDUSTRIAL RELATIONS, UNIVERSITY OF BUFFALO, IN CCH LABOUR LAW JOURNAL, VOL. 16 NO. 3, DISCUSSING THE N.L.R.B. DECISION IN THE GENERAL SHOE CASE, SAYS "LOWER SKILL EMPLOYEES MIGHT BE MORE INFLUENCED BY EMOTIONAL PROPAGANDA, WHILE HIGH SKILL EMPLOYEES MIGHT BE MORE EFFECTIVELY PERSUADED BY FACTUAL CONSIDERATIONS. THUS WHILE EMOTIONAL PROPAGANDA IS GENERALLY BELIEVED TO BE INEFFECTIVE IN AFFECTING BEHAVIOUR, IT MIGHT BE VIEWED AS COERCIVE AND UNFAIR IN CASES INVOLVING POORLY EDUCATED (LOW SKILL) WORKERS."

USING THE ABOVE REASONING AND REMEMBERING THAT THE BOARD, WHILE IT CAN PUNISH THE UNION BY REFUSING TO CERTIFY OR BY OTHER METHODS SUCH AS ORDERING A VOTE RATHER THAN OUTRIGHT CERTIFICATION, CAN DO NOTHING TO MANAGEMENT EXCEPT SEND THE PROTEST ON TO THE COURTS FOR ADJUDICATION OR PERHAPS WHERE THE ACTION COMPLAINED OF IS SO BLATANT, CERTIFY THE UNION EVEN IF IT HASN'T THE REQUIRED 55% MEMBERSHIP, BUT ONLY IF IT HAS OVER 50% MEMBERSHIP.

I BELIEVE THE UNION IS NOT BEING MERELY SPITEFUL OR VINDICTIVE IN THIS APPLICATION AND THE APPLICATION ITSELF IS NOT FRIVOLOUS OR VEXATIOUS, THEREFORE I WOULD HAVE ALLOWED CONSENT TO PROSECUTE THE COMPANY.

INDEXED ENDORSEMENTS - SECTION 65

11442-65-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) v. FORD MOTOR COMPANY OF CANADA, LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT HEARING: T. E. ARMSTRONG, M. J. SOMERVILLE, W. CORNWALL, J. MALONEY AND J. TAYLOR FOR THE COMPLAINANT, AND J. F. HOWARD, Q.C. FOR THE RESPONDENT.

DECISION OF J.F.W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER F. W. MURRAY: (JUNE 22, 1966)

1. THIS A COMPLAINT PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT, THAT THE AGGRIEVED PERSONS HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 48 AND SECTION 50 (A), (B) AND (C) OF THE ACT. THE COMPLAINT ALLEGES THAT ON OR ABOUT THE 13TH DAY OF DECEMBER, 1965, THE RESPONDENT, BY RESOLUTION OF ITS BOARD OF DIRECTORS, AMENDED THE RETIREMENT PENSION PLAN, IN WHICH THE AGGRIEVED PERSONS HAD PARTICIPATED, SO AS TO PROVIDE THAT THE PLAN SHOULD NOT APPLY TO PERSONS WHOSE TERMS AND CONDITIONS OF EMPLOYMENT WERE COVERED BY A COLLECTIVE AGREEMENT. THE COMPLAINANT CONTENTS THAT BY PROVIDING THAT ENTITLEMENT TO PARTICIPATION IN THE SAID PLAN TERMINATES ON THE SIGNING OF A COLLECTIVE AGREEMENT, THE RESPONDENT HAS IMPOSED A TERM OR CONDITION OF EMPLOYMENT WHICH INHERENTLY DISCOURAGES THE CONCLUSION OF A COLLECTIVE AGREEMENT AND WHICH VIOLATES SECTIONS 48 AND 50 OF THE ACT.

2. THE AGGRIEVED PERSONS ARE OFFICE AND CLERICAL PERSONNEL IN THE EMPLOY OF THE RESPONDENT AT BRAMALEA. THE RESPONDENT'S OPERATION AT BRAMALEA COMMENCED IN JULY, 1964, AND FROM THAT TIME THE AGGRIEVED PERSONS PARTICIPATE IN THE RESPONDENT'S PENSION PLAN, KNOWN AS FORD OF CANADA RETIREMENT PENSION PLAN NUMBER 3, HEREAFTER REFERRED TO AS PLAN NUMBER 3. ON APRIL 28TH, 1965, THE COMPLAINANT WAS CERTIFIED BY THIS BOARD AS BARGAINING AGENT FOR A UNIT OF OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT BRAMALEA, WHICH INCLUDED THE AGGRIEVED PERSONS. ON OR ABOUT MAY 14TH, 1965, THE AGGRIEVED PERSONS WERE ADVISED BY THE RESPONDENT THAT THE CERTIFICATION HAD AFFECTED THEIR STATUS UNDER PLAN NUMBER 3. IT APPEARS THAT THE PLAN THEN PROVIDED THAT EMPLOYEES REPRESENTED BY A BARGAINING AGENT WOULD NOT BE ELIGIBLE TO PARTICIPATE IN IT (ALTHOUGH THERE WAS A PROVISION WITH RESPECT TO ACCUMULATED CONTRIBUTIONS IN CASES OF EMPLOYEES HAVING TEN OR MORE YEARS OF "CREDITABLE SERVICE"). THIS ACTION BY THE RESPONDENT WAS THE SUBJECT OF COMPLAINT BY THE COMPLAINANT, PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT: BOARD FILE No. 10720-65- THAT COMPLAINT WAS LISTED FOR HEARING TOGETHER WITH THE INSTANT CASE. WITH THE CONCURRENCE OF THE RESPONDENT AND WITH THE CONSENT OF THE BOARD, THAT COMPLAINT WAS WITHDRAWN. WHILE THE ISSUE, THEREFORE, IS NOT BEFORE US FOR DECISION, THE BOARD NOTES THAT THE PROVISION BY THE EMPLOYER THAT REPRESENTATION OF EMPLOYEES BY A TRADE UNION, WITHOUT MORE, DEPRIVES THEM OF THEIR RIGHT OF PARTICIPATION IN A PENSION PLAN MAY VERY WELL CONSTITUTE AN OFFENCE UNDER SECTION 50 OF

THE LABOUR RELATIONS ACT, AND WHERE, AS IN THE INSTANT CASE, ACTION TO THAT EFFECT IS TAKEN FOLLOWING NOTICE TO BARGAIN, IT WOULD APPEAR QUITE CLEARLY CONSTITUTE A VIOLATION OF SECTION 59 OF THE ACT, WHICH PROHIBITS IN SUCH CIRCUMSTANCES THE ALTERATION OF "THE RATES OF WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY, OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES".

3. ON OR ABOUT OCTOBER 12TH, 1965, THE PARTIES CONCLUDED A MEMORANDUM OF SETTLEMENT, APPENDIX 3 TO WHICH IS AN AGREEMENT CONCERNING THE RETIREMENT PENSION PLAN. IN VIEW OF THE DISPOSITION WHICH THE BOARD MAKES OF THIS COMPLAINT, IT IS NOT NECESSARY FOR US TO DEAL WITH THE ARGUMENT THAT BY JOINING IN THIS MEMORANDUM OF SETTLEMENT THE COMPLAINANT HAS WAIVED ITS RIGHT TO PROCEED WITH THIS COMPLAINT. THE ACTION OF WHICH THE COMPLAINANT NOW COMPLAINS WAS, AS APPEARS BELOW, TAKEN BY THE RESPONDENT AFTER THE MEMORANDUM OF SETTLEMENT HAD BEEN MADE.

4. ON OR ABOUT DECEMBER 13TH, 1965, THE BOARD OF DIRECTORS OF THE RESPONDENT ENACTED BY RESOLUTION CERTAIN AMENDMENTS TO PLAN NUMBER 3. BY THIS RESOLUTION THE MEMBERSHIP PROVISION OF PLAN NUMBER 3 WAS AMENDED SO AS TO READ:-

EMPLOYEES TO WHOM THE PLAN SHALL APPLY

THE PLAN SHALL APPLY TO ALL EMPLOYEES WHO ARE NOT COVERED BY ANY OTHER PRIVATE RETIREMENT PLAN TO WHICH THE COMPANY CONTRIBUTES EXCEPT:

(I) - - -

(II) - - -

(III) - - -

(IV) EMPLOYEES WHOSE TERMS AND CONDITIONS OF EMPLOYMENT ARE GOVERNED BY A COLLECTIVE AGREEMENT BETWEEN THE COMPANY AND A BARGAINING AGENT.

IT IS THE ACTION OF THE RESPONDENT IN ENACTING SUCH A RESTRICTION ON PARTICIPATION IN PLAN NUMBER 3 WHICH THE COMPLAINANT ALLEGES CONSTITUTES A VIOLATION OF SECTIONS 48 AND 50 OF THE ACT. THESE SECTIONS PROVIDE AS FOLLOWS:-

48. NO EMPLOYER OR EMPLOYERS' ORGANIZATION AND NO PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION SHALL PARTICIPATE IN OR INTERFERE WITH THE FORMATION, SELECTION OR ADMINISTRATION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION OR CONTRIBUTE FINANCIAL OR OTHER SUPPORT TO A TRADE UNION, BUT NOTHING IN THIS SECTION SHALL BE DEEMED TO DEPRIVE AN EMPLOYER OF HIS FREEDOM TO EXPRESS HIS VIEWS SO LONG AS HE DOES NOT USE COERVISION, INTIMIDATION, THREATS,

PROMISES OR UNDUE INFLUENCE.

50. NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION.

- (A) SHALL REFUSE TO EMPLOY OR TO CONTINUE TO EMPLOY A PERSON, OR DISCRIMINATE AGAINST A PERSON IN REGARD TO EMPLOYMENT OR ANY TERM OR CONDITION OF EMPLOYMENT BECAUSE THE PERSON WAS OR IS A MEMBER OF A TRADE UNION OR WAS OR IS EXERCISING ANY OTHER RIGHTS UNDER THIS ACT;
- (B) SHALL IMPOSE ANY CONDITION IN A CONTRACT OF EMPLOYMENT OR PROPOSE THE IMPOSITION OF ANY CONDITION IN A CONTRACT OF EMPLOYMENT THAT SEEKS TO RESTRAIN AN EMPLOYEE OR A PERSON SEEKING EMPLOYMENT FROM BECOMING A MEMBER OF A TRADE UNION OR EXERCISING ANY OTHER RIGHTS UNDER THIS ACT; OR
- (C) SHALL SEEK BY THREAT OF DISMISSAL, OR BY ANY OTHER KIND OF THREAT, OR BY THE IMPOSITION OF A PECUNIARY OR OTHER PENALTY, OR BY ANY OTHER MEANS TO COMPEL AN EMPLOYEE TO BECOME OR REFRAIN FROM BECOMING OR TO CONTINUE TO BE OR TO CEASE TO BE A MEMBER OR OFFICER OR REPRESENTATIVE OF A TRADE UNION OR TO CEASE TO EXERCISE ANY OTHER RIGHTS UNDER THIS ACT.

5. COUNSEL FOR THE COMPLAINANT ARGUES THAT THE AMENDMENT TO THE MEMBERSHIP PROVISIONS OF PLAN NUMBER 3 VIOLATES SECTION 48 OF THE ACT, IN THAT IT INHIBITS THE CONCLUSION OF A COLLECTIVE AGREEMENT, BY NOTIFYING THE EMPLOYEES THAT CONCLUSION OF SUCH AN AGREEMENT WOULD LEAD TO THE LOSS OF THE RIGHT OF PARTICIPATION IN THE PLAN; SINCE CONCLUSION OF COLLECTIVE AGREEMENTS IS A PRIMARY OBJECT OF A TRADE UNION'S ORGANIZATION, THE INHIBITION OF THE CONCLUSION OF AN AGREEMENT WOULD AMOUNT TO INTERFERENCE WITH THE ADMINISTRATION OF THE TRADE UNION. IT MIGHT BE DOUBTED WHETHER THE LANGUAGE OF SECTION 48 SUPPORTS THIS ARGUMENT. IF IT WERE SO, THEN ANY CONDUCT, INCLUDING ANY REFUSAL TO ACCEDE TO ITS BARGAINING PROPOSALS WHICH STOOD IN THE WAY OF A TRADE UNION'S FULL REALIZATION OF ITS AIMS, MIGHT BE REGARDED AS "INTERFERENCE WITH ITS "ADMINISTRATION". IN OUR VIEW, THE REFERENCE TO THE "ADMINISTRATION OF A TRADE UNION IS A REFERENCE TO THE INTERNAL MANAGEMENT OF THE ORGANIZATION. INDEED, READING SECTION 48 AS A WHOLE, IT IS CLEAR THAT ITS PURPOSE IS TO PROTECT TRADE UNION ORGANIZATIONS AS SUCH FROM INTERFERENCE OR PARTICIPATION BY EMPLOYERS, AS WELL AS TO PROTECT EMPLOYEES IN THE EXERCISE OF THEIR FREEDOM OF CHOICE. IN OUR OPINION, THE CONDUCT OF THE EMPLOYER IN THE INSTANT CASE DOES NOT CONSTITUTE A VIOLATION OF EITHER THE SPIRIT OR THE LETTER OF THIS PROVISION.

6. COUNSEL FOR THE COMPLAINANT ARGUED THAT THE CONDUCT OF THE RESPONDENT CONSTITUTED AS WELL A VIOLATION OF SECTION 50 (A), (B) AND (C) OF THE ACT. THE PROVISIONS OF THIS SECTION ARE DIRECTED AGAINST INTERFERENCE BY EMPLOYERS WITH THE RIGHTS OF EMPLOYEES ESTABLISHED UNDER THE ACT. CLEARLY, THE RIGHT TO PARTICIPATE IN PLAN NUMBER 3 HAD BEEN FOR THE AGGRIEVED PERSONS A TERM OR CONDITION OF EMPLOYMENT AND THE EMPLOYER'S ALTERATION OF THIS TERM OR CONDITION IN CIRCUMSTANCES RELATING TO UNION ACTIVITY MIGHT WELL CONSTITUTE A VIOLATION OF THE PROVISIONS OF THIS SECTION. THUS, AS SUGGESTED IN PARAGRAPH 2 ABOVE, THE PROVISION THAT PARTICIPATION IN THE PLAN WOULD NOT BE OPEN TO PERSONS WHO WERE REPRESENTED BY A BARGAINING AGENT WOULD SEEM TO US CLEARLY TO INVOLVE A VIOLATION OF SECTION 50, SINCE THE KNOWLEDGE THAT THIS PRIVILEGE WOULD BE LOST MIGHT WEIGH IN AN EMPLOYEES MIND AGAINST THE DESIRABILITY OF TRADE UNION REPRESENTATION. AS THE PROVISIONS OF PLAN NUMBER 3 STAND NOW, HOWEVER, IT IS NOT UNION ORGANIZATION WHICH WOULD LEAD TO THE LOSS OF THE RIGHT TO PARTICIPATE IN PLAN NUMBER 3, BUT RATHER THE COMPLETION OF A COLLECTIVE AGREEMENT. WHILE THERE MAY BE CIRCUMSTANCES IN WHICH, AS COUNSEL FOR THE COMPLAINANT ARGUES, THE KNOWLEDGE THAT THE RIGHT TO PARTICIPATE IN A PARTICULAR PLAN WOULD BE LOST IN THE EVENT OF COMPLETION OF A COLLECTIVE AGREEMENT WOULD INHIBIT THE COMPLETION OF SUCH AN AGREEMENT, IT IS OUR OPINION THAT WHETHER SUCH INHIBITION IS CREATED IS A QUESTION OF FACT, TO BE DETERMINED WITH REGARD TO THE CIRCUMSTANCES OF EACH CASE. IN THIS RESPECT THE SITUATION IS TO BE DISTINGUISHED FROM THAT REFERRED TO IN PARAGRAPH 2 ABOVE. THE ANNOUNCEMENT BY AN EMPLOYER THAT, ON EMPLOYEES BEING REPRESENTED BY A BARGAINING AGENT, THEY WOULD LOSE THE RIGHT OF PARTICIPATION, MUST BE DEEMED TO HAVE THE EFFECT OF INHIBITING THEM IN THE EXERCISE OF THEIR RIGHT TO TRADE UNION REPRESENTATION. IN A SITUATION SUCH AS THAT WHICH HAS ARISEN IN THE INSTANT CASE, HOWEVER, WHETHER OR NOT THERE IS ANY SUCH EFFECT IS CONTINGENT UPON THE CIRCUMSTANCES.

7. IT IS NOT SUGGESTED THAT THE RESPONDENT HAS DELIBERATELY ACTED IN ORDER TO INHIBIT TRADE UNION ORGANIZATION AMONG ITS EMPLOYEES OR IN ORDER TO INHIBIT THE COMPLETION OF A COLLECTIVE AGREEMENT OR FROM ANY ANTI-UNION BIAS. THE COMPLAINANT ARGUES RATHER THAT THE EFFECT OF THE RESPONDENT'S ACTION IS ALONE TO BE CONSIDERED AND THAT THE RESPONDENT MUST BE TAKEN TO HAVE INTENDED THE REASONABLE CONSEQUENCES OF ITS ACTS. WHILE WE HAVE INDICATED OUR VIEW THAT WHAT HAS BEEN DONE IN THE INSTANT CASE WAS NOT NECESSARILY IN VIOLATION OF SECTION 50 AND WHILE WE FIND THAT THE RESPONDENT DID NOT INTEND TO RESTRAIN ANY PERSON IN THE EXERCISE OF ANY RIGHTS UNDER THE ACT, IT REMAINS TO BE DETERMINED WHETHER OR NOT SUCH WAS, IN THE CIRCUMSTANCES, A REASONABLE CONSEQUENCE OF THE RESPONDENT'S ACTION AND WHETHER THE RESPONDENT SHOULD BE DEEMED RESPONSIBLE THEREFOR. THIS DETERMINATION, OF COURSE, IS TO BE MADE, NOT BY EXAMINING THE STATES OF MIND OF INDIVIDUAL EMPLOYEES, BUT RATHER BY CONSIDERING THE IMPLICATIONS OF THE RESPONDENT'S CONDUCT IN ITS ACTUAL CONTEXT. THEREFORE, THE HISTORY OF THE RELATIONSHIP BETWEEN THE PARTIES AND THE COLLECTIVE BARGAINING NEGOTIATIONS WHICH HAVE BEEN CARRIED ON ARE RELEVANT AND PROPER TO BE CONSIDERED IN THE INSTANT CASE.

8. THE STATEMENT OF AGREED FACTS FILED BY THE PARTIES IN THIS MATTER INDICATES THAT, AS OF DECEMBER 31ST, 1964, THE RESPONDENT MAINTAINED SIX PENSION PLANS COVERING SOME 14,640 EMPLOYEES. THESE WERE AS FOLLOWS:-

PLAN No. 1 -- UNITED AUTOMOBILE WORKERS (HOURLY EMPLOYEES IN NAMED BARGAINING UNITS)	10,506
PLAN No. 2 -- UAW LOCAL 240 BARGAINING UNIT	368
PLAN No. 3 -- ALL EMPLOYEES EXCLUDED FROM BARGAINING UNITS	3,668
PLAN No. 4 -- UNITED PLANT GUARD WORKERS (IN SPECIFIED BARGAINING UNITS)	77
PLAN No. 5 -- INTERNATIONAL UNION OF OPERATING ENGINEERS (IN SPECIFIED BARGAINING UNITS)	17
PLAN No. 6 -- CANADIAN UNION OF OPERAT- ING ENGINEERS (IN SPECIFIED BARGAINING UNIT -- PLAN TERMINATED AND COVERAGE TRANSFERRED TO PLAN No. 1 DURING 1965)	4
TOTAL --	<hr/> 14,640 <hr/>

PLANS 4, 5 AND 6 WERE EACH ESTABLISHED AFTER PLAN NUMBER 3 HAD BEEN ESTABLISHED. IN EACH CASE THEY WERE ESTABLISHED FOR EMPLOYEES FORMERLY COVERED BY PLAN NUMBER 3, AND IN EACH CASE THEY WERE ESTABLISHED FOLLOWING CERTIFICATION OF THE TRADE UNIONS REFERRED TO AND AFTER, IT WOULD SEEM, NEGOTIATIONS WITH THESE UNIONS. THE AMENDMENT WHICH HAS BEEN MADE TO THE MEMBERSHIP PROVISION OF PLAN NUMBER 3 AFFECTING THE AGGRIEVED PERSONS IS IN ACCORDANCE WITH THIS PATTERN.

9. FOLLOWING THE CERTIFICATION OF THE COMPLAINANT ON APRIL 28TH, 1965, THE COMPLAINANT ON OR ABOUT MAY 6TH, 1965, GAVE TO THE RESPONDENT WRITTEN NOTICE OF ITS DESIRE TO COMMENCE NEGOTIATIONS FOR A COLLECTIVE AGREEMENT, PURSUANT TO SECTION 11 OF THE LABOUR RELATIONS ACT. ON OR ABOUT MAY 27TH, 1965, THE REPRESENTATIVES OF THE COMPLAINANT AND THE RESPONDENT MET FOR THE FIRST TIME TO BARGAIN FOR A COLLECTIVE AGREEMENT. THERE WAS PRESENTED ON BEHALF OF THE COMPLAINANT A FULL SET OF PROPOSALS (EXHIBIT 9). ARTICLE 25, PARAGRAPHS 7 AND 8, OF THOSE PROPOSALS DEAL WITH THE UNION'S POSITION WITH RESPECT TO PENSION COVERAGE AND ARE AS FOLLOWS:-

7. CONTRACT TO INCLUDE THE PRESENT NON CONTRIBUTORY PENSION PLAN FOR OFFICE WORKERS AND PROVIDE FOR A JOINT BOARD OF ADMINISTRATION.

8. THE UNION DEMANDS THAT THE EMPLOYEES IN THE BARGAINING UNIT BE GIVEN THE RIGHT TO PARTICIPATE IN THE CONTRIBUTORY PENSION PLAN.

(THE REFERENCE TO "THE CONTRIBUTORY PENSION PLAN" IN PARAGRAPH 8 APPEARS TO BE A REFERENCE TO PLAN NUMBER 3). ON OR ABOUT OCTOBER 12TH, 1965, THE PARTIES CONCLUDED THE MEMORANDUM OF SETTLEMENT, ABOVE REFERRED TO, APPENDIX 3 TO WHICH IS AN AGREEMENT CONCERNING RETIREMENT PENSION PLAN. THE SETTLEMENT WAS RATIFIED BY THE MEMBERSHIP OF THE COMPLAINANT'S LOCAL 1324 ON OCTOBER 13TH, 1965.

10. HAVING REGARD TO THESE FACTS, IT IS QUITE IMPOSSIBLE TO SAY THAT ANY OFFENCE HAS BEEN COMMITTED BY THE RESPONDENT VIS-A-VIS THE AGGRIEVED PERSONS, OR THAT, IN THE CIRCUMSTANCES, THE AMENDMENT TO PLAN NUMBER 3 PASSED BY THE DIRECTORS OF THE RESPONDENT ON DECEMBER 13TH, 1965, SEEKS TO RESTRAIN ANY PERSON FROM EXERCISING ANY RIGHTS UNDER THE ACT OR, IN PARTICULAR, TO INHIBIT THE COMPLETION OF A COLLECTIVE AGREEMENT. WE WISH TO MAKE IT CLEAR, HOWEVER, THAT THERE MAY BE OTHER CIRCUMSTANCES IN WHICH THE ALTERATION OF CONDITIONS OF EMPLOYMENT SO AS TO AFFECT PERSONS COVERED BY A COLLECTIVE AGREEMENT MIGHT CONSTITUTE A VIOLATION OF SECTION 50; THE INSTANT CASE IS NOT SUCH A CASE.

11. IT IS CLEAR THAT PLAN NUMBER 3 IS OPERATED BY THE RESPONDENT FOR THE BENEFIT OF EMPLOYEES NOT COVERED BY COLLECTIVE AGREEMENTS. COUNSEL FOR THE COMPLAINANT ARGUED THAT, BY RESTRICTING MEMBERSHIP IN THE PLAN IN THIS WAY, THE RESPONDENT WAS SOMEHOW IN VIOLATION OF THE OBLIGATION TO BARGAIN IN GOOD FAITH, IMPOSED UPON IT BY SECTION 12 OF THE ACT. COUNSEL URGED THAT THE AGGRIEVED PERSONS WISHED TO HAVE AVAILABLE TO THEM THE BEBENEFITS OF PLAN NUMBER 3 AS WELL AS THE BENEFITS OF ANY PLAN AGREED TO BETWEEN THE RESPONDENT AND THE COMPLAINANT WITH RESPECT TO THE BARGAINING UNIT IN WHICH THEY ARE INCLUDED. THE SIMPLE ANSWER TO THIS (AND INDEED, IT IS THE ANSWER TO THE BASIC ARGUMENT OF THE COMPLAINANT, THAT THE RESPONDENT'S ACTION INHIBITS THE CONCLUSION OF A COLLECTIVE AGREEMENT) IS THAT THERE IS NOTHING TO PREVENT THE COMPLAINANT FROM MAKING SUCH A DEMAND OF THE RESPONDENT AND INDEED, IT DID DO SO, AS EXHIBIT 9 REVEALS. THE MERE FACT THAT THE RESPONDENT HAS, AS IT WERE, ANNOUNCED IN ADVANCE ITS POSITION DOES NOT PREVENT THE PARTIES FROM AGREEING OTHERWISE AS A RESULT OF COLLECTIVE BARGAINING.

12. COUNSEL FOR THE COMPLAINANT REFERRED THE BOARD TO A NUMBER OF DECISIONS OF THE NATIONAL LABOUR RELATIONS BOARD IN THE UNITED STATES, SOME OF WHICH HAVE BEEN AFFIRMED BY THE COURTS OF THE UNITED STATES. THESE DECISIONS, HOWEVER, RELATED IN EACH CASE TO CIRCUMSTANCES IN WHICH AN EMPLOYER DEPRIVED EMPLOYEES OF CERTAIN PRIVILEGES WHICH WOULD OTHERWISE HAVE BEEN AVAILABLE TO THEM SOLELY BECAUSE THEY WERE MEMBERS OF A TRADE UNION OR HAD BECOME REPRESENTED BY A BARGAINING AGENT. THE VIEW WHICH WE TAKE OF SUCH CIRCUMSTANCES, SET OUT IN PARAGRAPH 2 ABOVE, IS IN ACCORD WITH THESE DECISIONS. THE CIRCUMSTANCES OF THE INSTANT CASE ARE, AS WE HAVE INDICATED, CLEARLY DISTINGUISHABLE.

13. ON THE BASIS OF THE EVIDENCE BEFORE IT, THE BOARD IS NOT SATISFIED THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO

SECTION 48 OR SECTION 50 OF THE LABOUR RELATIONS ACT. THE COMPLAINT IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER E. BOYER:

I DISSENT.

ON THE BASIS OF THE EVIDENCE BEFORE ME I WOULD HAVE FOUND THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 48 AND SECTION 50 OF THE LABOUR RELATIONS ACT, AND I WOULD HAVE GRANTED THEM THE RELIEF ASKED.

11770-66-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC
(COMPLAINANT) v. SENTRY DEPARTMENT STORES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: DONALD G. COLLINS AND FRED JEAVONS FOR THE
COMPLAINANT, J. J. KOVAC, GEORGE J. VEACH AND D. J. MESSHAM FOR THE
RESPONDENT.

DECISION OF THE BOARD: (JUNE 29, 1966)

1. THIS A COMPLAINT BROUGHT PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT CLAIMS THAT STELLA LAMBERT WAS DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 (A) OF THE LABOUR RELATIONS ACT ON OR ABOUT APRIL 16TH, 1966. THIS COMPLAINT WAS MADE ON MAY 13TH, 1966.

2. MRS. STELLA LAMBERT, THE AGGRIEVED PERSON, WAS EMPLOYED BY THE RESPONDENT AS A SENIOR SALES CLERK IN THE RESPONDENT'S LINEN DEPARTMENT FOR MORE THAN TWO YEARS. ON FRIDAY, APRIL 15TH, 1966, MRS. LAMBERT WAS SCHEDULED TO COMMENCE WORK AT 1:00 P.M. HOWEVER, AT 10:00 A.M. MRS. LAMBERT ATTENDED THE RESPONDENT'S PREMISES AND APPROACHED THE LINEN DEPARTMENT MANAGER, MR. JACK ESSES, AND REQUESTED LEAVE OF ABSENCE FOR TWO DAYS BECAUSE OF A VERY SERIOUS MATTER. WHILE MRS. LAMBERT DID NOT DETAIL THE MATTER WHICH CAUSED HER TO REQUEST LEAVE OF ABSENCE HER REQUEST WAS NOT DENIED. AT MRS. LAMBERT'S SUGGESTION, MR. ESSES TELEPHONED A FORMER EMPLOYEE AND REQUESTED THAT SHE WORK FOR THE NEXT TWO DAYS WHILE MRS. LAMBERT WAS ABSENT.

3. IT APPEARED FROM THE EVIDENCE THAT ON THURSDAY, APRIL 14TH, 1966, MRS. ELLIS, THE RESPONDENT'S HEAD CASHIER, CONTACTED SOME OF THE RESPONDENT'S EMPLOYEES AT THEIR HOME AND SPOKE TO THEM ABOUT THE COMPLAINANT'S CURRENT ATTEMPT TO ORGANIZE THE RESPONDENT'S EMPLOYEES. MRS. ELLIS WAS OPPOSED TO THE COMPLAINANT UNION AND STATED TO THE EMPLOYEES THAT THE RESPONDENT HAD BEEN VERY GOOD TO HER PARTLY BECAUSE OF HER ATTEMPTS TO KEEP THE UNION OUT OF THE RESPONDENT'S PREMISES. SHE FURTHER STATED THAT MRS. LAMBERT WAS ONE OF THE ORGANIZERS FOR THE UNION. MRS. LAMBERT ACKNOWLEDGED AT THE HEARING THAT SHE HAD CO-OPERATED WITH THE RESPONDENT AT THE TIME ANOTHER UNION WAS ATTEMPTING TO ORGANIZE THE RESPONDENT'S EMPLOYEES AND AT THAT TIME SIGNED A STATEMENT AT THE REQUEST OF THE RESPONDENT.

4. Mr. JACK ESSES TESTIFIED THAT THE DECISION TO DISMISS MRS. LAMBERT CAME FROM THE HEAD OFFICE IN TORONTO FROM MR. EDMOND ESSES. MR. GEORGE VEACH, THE DIRECTOR OF OPERATIONS AND GENERAL MANAGER OF THE RESPONDENT TESTIFIED THAT MR. EDMOND ESSES HAD TELEPHONED HIM ON SATURDAY, APRIL 16TH, 1966, TO DISCUSS THE DISCHARGE OF MRS. LAMBERT AND THE QUESTION OF THE UNION ACTIVITY WAS DISCUSSED. MR. VEACH TESTIFIED THAT HIS ADVICE TO MR. EDMOND ESSES WAS TO THE EFFECT THAT IF MR. EDMOND ESSES HAD PROPER GROUNDS FOR DISMISSAL HE SHOULD GO AHEAD WITH HIS PLAN TO DISMISS MRS. LAMBERT. AT APPROXIMATELY 5:30 P.M. ON SATURDAY, APRIL 16TH, 1966 MR. JACK ESSES, ON INSTRUCTIONS FROM MR. EDMOND ESSES, TELEPHONED MRS. LAMBERT AND ADVISED HER THAT SHE WAS DISCHARGED FOR FAILURE TO GIVE A REASONABLE REASON FOR HER ABSENCE.

5. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS THAT MR. JACK ESSES ACQUIESCED TO THE REQUEST OF MRS. LAMBERT ON FRIDAY, APRIL 15TH, 1966, AND HIS ACTIONS INDICATE THAT HE AGREED TO GRANT THE TIME OFF AS REQUESTED.

6. IT IS A RARE CASE INDEED, WHERE A PERSON IS DISCHARGED FOR UNION ACTIVITY THAT THE COMPANY ANNOUNCES THAT THIS IS THE REASON AT THE TIME OF DISCHARGE. THE BOARD, IN MAKING ITS DETERMINATION IN THIS MATTER, MUST LOOK AT THE EVIDENCE OF ALL THE SURROUNDING CIRCUMSTANCES TO DETERMINE WHETHER OR NOT THE COMPLAINANT HAS SATISFIED THE ONUS UPON IT THAT THE MOST LIKELY CAUSE OF DISCHARGE IS THAT THE RESPONDENT DISCHARGED THE AGGRIEVED PERSON CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

7. WHILE THE EVIDENCE IN THIS CASE IS NOT CLEAR CUT, HAVING REGARD TO ALL THE CIRCUMSTANCES SURROUNDING THE DISCHARGE THE BOARD IS IMPELLED TO FIND THAT THE RESPONDENT REFUSED TO CONTINUE TO EMPLOY MRS. LAMBERT BECAUSE SHE WAS A MEMBER OF A TRADE UNION AND WAS SUSPECTED OF SUPPORTING THE TRADE UNION'S ATTEMPT TO ORGANIZE THE RESPONDENT'S EMPLOYEES. THE ONLY EVIDENCE CONTRARY TO THIS FINDING IS THE RESPONDENT'S EXPRESSED REASON FOR THE DISCHARGE. THE REASON GIVEN BY THE RESPONDENT IS INCONSISTENT WITH THE RESPONDENT'S ACTIONS AND IN THE OPINION OF THE BOARD IS NOT WORTHY OF BELIEF.

8. THE BOARD IS THEREFORE SATISFIED THAT MRS. STELLA LAMBERT WAS DISCHARGED BY THE RESPONDENT ON APRIL 16, 1966 CONTRARY TO THE PROVISIONS OF SECTION 50 (A) OF THE LABOUR RELATIONS ACT.

9. THE BOARD DETERMINES THAT:

- (A) MRS. STELLA LAMBERT SHALL BE REINSTATED FORTHWITH IN THE POSITION SHE HELD AT THE TIME OF HER DISCHARGE;
- (B) HAVING REGARD TO THE DELAY IN MAKING THIS APPLICATION AND THE FACT THAT MRS. STELLA LAMBERT'S ATTEMPTS TO FIND ALTERNATE EMPLOYMENT IN ORDER TO MITIGATE HER DAMAGES, LEAVES SOMETHING TO BE DESIRED, THE BOARD DETERMINES THAT THE RESPONDENT PAY TO MRS. STELLA LAMBERT THE SUM OF \$200.00 IN FULL SATISFACTION OF THE LOSS OF EARNINGS THAT MRS. STELLA LAMBERT SUSTAINED BY REASON OF HER HAVING BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN THE DATE OF HER DISCHARGE AND JUNE 24TH, 1966, THE DATE OF THE HEARING IN THIS MATTER;

- (c) THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF THE LOSS OF EARNINGS THAT MRS. STELLA LAMBERT SUSTAINED BY REASON OF HER HAVING BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN JUNE 24TH, 1966 AND THE DATE OF HER REINSTATEMENT; AND
- (d) IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO IN PARAGRAPH (c) HEREOF WITHIN FOURTEEN DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE ADDITIONAL AMOUNT TO BE PAID TO MRS. STELLA LAMBERT.

INDEXED ENDORSEMENT - SECTION 47(A)

11627-66-M: THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR (APPLICANT) V. BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, (AFFILIATED WITH BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION A.F. OF L. C.I.O. C.L.C.) AND LOCAL 519, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO:CLC (RESPONDENTS).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: (JUNE 17, 1966)

1. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAD BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 1 OF SECTION 44 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE TAKING OF THE REPRESENTATION VOTE PURSUANT TO THE BOARD'S DIRECTION OF MAY 16TH, 1966, IN THIS MATTER.
2. ON THE TAKING OF THE REPRESENTATION VOTE MORE THAN FIFTY PER CENT OF THE BALLOTS CAST WERE CAST IN FAVOUR OF BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, (AFFILIATED WITH BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION A.F. OF L. C.I.O. C.L.C.).
3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES AS SET FORTH IN ITS DECISION OF MAY 16TH, 1966, THE BOARD DECLARES, PURSUANT TO SECTION 47A (5) (b) OF THE LABOUR RELATIONS ACT, THAT BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, (AFFILIATED WITH BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION A.F. OF L. C.I.O. C.L.C.) SHALL BE THE BARGAINING AGENT FOR ALL EMPLOYEES OF THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PROFESSIONAL TEACHING STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK.

INDEXED ENDORSEMENT - SECTION 79(2)

11532-65-M: INTERNATIONAL LEATHER GOODS, PLASTICS & NOVELTY WORKERS' UNION, LOCAL 8 (APPLICANT) v. A. J. SIRIS PRODUCTS (CANADA) LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: (JUNE 8, 1966)

1. THE APPLICANT APPLIED ON MARCH 18TH, 1966 PURSUANT TO THE PROVISIONS OF SECTION 79(2) OF THE LABOUR RELATIONS ACT FOR A DETERMINATION AS TO WHETHER C. CASTELLARIN IS AN EMPLOYEE OF THE RESPONDENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

2. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 41 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED MAY 18TH, 1966 IN THIS MATTER.

3. WHILE IT APPEARS FROM THE REPORT OF THE EXAMINER AND THE STATEMENTS CONTAINED IN THE LETTER FROM THE RESPONDENT DATED MAY 30TH, 1966 THAT THE FUNCTIONS OF C. CASTELLARIN MAY HAVE CHANGED SUBSEQUENT TO MARCH 18TH, 1966, THE BOARD CAN ONLY CONCERN ITSELF WITH HER DUTIES AND RESPONSIBILITIES AS OF THE DATE THIS APPLICATION WAS MADE. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, THE BOARD IS SATISFIED THAT WHILE C. CASTELLARIN PERFORMS FUNCTIONS SIMILAR TO THOSE OF A LEAD HAND OR A GROUP LEADER, HOWEVER, THE VAST MAJORITY OF HER FUNCTIONS ARE THOSE COMMONLY PERFORMED BY EMPLOYEES WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. THE BOARD THEREFORE DETERMINES THAT C. CASTELLARIN IS AN EMPLOYEE OF THE RESPONDENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION

11612-66-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO (APPLICANT) v. GENERAL INSTRUMENT OF CANADA LTD. (RESPONDENT) v. GENERAL INSTRUMENT, MOUNT FOREST EMPLOYEES' UNION (INTERVENER).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: (JUNE 14, 1966)

1. IN ITS ENDORSEMENT OF THE RECORD IN THIS MATTER, DATED MAY 31ST, 1966, THE BOARD SET OUT ITS FINDING THAT ALL EMPLOYEES OF THE RESPONDENT AT MOUNT FOREST, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN OR SUPERVISOR, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

2. BY LETTER, DATED JUNE 1ST, 1966, COUNSEL FOR THE RESPONDENT SUBMITTED

THAT IT HAD BEEN THE INTENTION OF THE PARTIES THAT THE APPROPRIATE BARGAINING UNIT WOULD BE "ALL OF THE EMPLOYEES OF THE RESPONDENT AT MOUNT FOREST, SAVE AND EXCEPT THE FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN OR SUPERVISORS, OFFICE AND SALES STAFF, ENGINEERING STAFF AND QUALITY CONTROL". IN EFFECT, THE RESPONDENT REQUESTS VARIATION OF THE BOARD'S DECISION, AND COUNSEL LETTER WILL BE TREATED AS CONTAINING SUCH A REQUEST.

3. WITH RESPECT TO THE BOARD'S FAILURE TO EXCLUDE QUALITY CONTROL PERSONNEL FROM THE BARGAINING UNIT, IT MAY BE NOTED THAT THE INCLUSION OR EXCLUSION OF QUALITY CONTROL PERSONNEL MAY VARY WITH THE PARTICULAR CIRCUMSTANCES OF EACH CASE. IN THE ABSENCE OF GOOD REASONS FOR THEIR EXCLUSION FROM A "PRODUCTION" UNIT, HOWEVER, (AS FOR EXAMPLE, THAT THEY MORE PROPERLY BELONG IN A UNIT OF CLERICAL OR TECHNICAL EMPLOYEES, OR THAT THEY EXERCISE MANAGERIAL FUNCTIONS THEY WOULD BE INCLUDED IN THE UNIT. IT WAS STATED AT THE HEARING, BY COUNSEL FOR THE RESPONDENT, THAT THERE WERE AT PRESENT NO PERSONS DESCRIBED AS QUALITY CONTROL PERSONNEL IN THE EMPLOY OF THE RESPONDENT. THE BOARD, THEREFORE, SEES NO REASON TO VARY ITS DESCRIPTION OF THE BARGAINING UNIT IN THIS REGARD.

4. WITH RESPECT TO THE BOARD'S FAILURE TO EXCLUDE "ENGINEERING STAFF", THIS EXCLUSION WAS CONTAINED IN THE BARGAINING UNIT SUGGESTED BY THE APPLICANT AND BY THE RESPONDENT, ALTHOUGH NOT IN THAT SUGGESTED BY THE INTERVENER. AT THE HEARING, ALL PARTIES AGREED THAT IT HAD NOT BEEN INTENDED TO EXCLUDE OPERATING ENGINEERS. THERE WERE NO REPRESENTATIONS AS TO WHAT WAS MEANT BY "ENGINEERING STAFF". AGAIN, IN THE ABSENCE OF GOOD REASONS FOR THE EXCLUSION OF SUCH PERSONS (AS FOR EXAMPLE, THAT THEY EXERCISE MANAGERIAL FUNCTIONS, THAT THEY MORE PROPERLY COME WITHIN ANOTHER UNIT, SUCH AS OFFICE STAFF, OR THAT THEY ARE EXEMPTED FROM THE PROVISIONS OF THE LABOUR RELATIONS ACT BY VIRTUE OF SECTION 1 (3) (A) OF THE ACT), THEY WOULD BE INCLUDED IN THE BARGAINING UNIT. WHILE THE BOARD HAS REGARD TO THE AGREEMENT OF THE PARTIES IN DETERMINING AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING SUCH AGREEMENT CANNOT RELIEVE THE BOARD OF ITS DUTY TO DETERMINE THE APPROPRIATE UNIT IMPOSED BY SECTION 6 OF THE LABOUR RELATIONS ACT.

5. THE REQUEST OF THE RESPONDENT IS ACCORDINGLY DENIED.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

THE FOLLOWING EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES ARE REPORTED FOR THE INFORMATION OF THE PUBLIC.

11724-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 598 (APPLICANT) v. BEMAC PROTECTIVE COATINGS LIMITED (RESPONDENT) v. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA (LOCAL NO. 506) (INTERVENER).

- AND -

11725-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 598 (APPLICANT) v. VULCAN ASPHALT AND SUPPLY COMPANY LIMITED (RESPONDENT) v. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA (LOCAL NO. 506) (HOT AND COLD MASTIC AND HOT AND COLD PLASTIC DIVISION) (INTERVENER).

4. AFTER CONSIDERING THE TERMS OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENING TRADE UNION, WHICH CEASED TO OPERATE ON APRIL 30TH, 1965, THE EVIDENCE OF THE PARTIES BEFORE THE BOARD AT THE HEARING HELD ON MAY 17TH, 1966 AND THE REPORT OF THE EXAMINER IN THIS MATTER DATED MAY 20TH, 1966, THE BOARD IS SATISFIED THAT THE APPROPRIATE BARGAINING UNIT SHOULD BE DEFINED IN TERMS SIMILAR TO THOSE PROPOSED BY THE APPLICANT IN THIS CASE. WE ARE SATISFIED, FURTHER, THAT IN DESCRIBING THE BARGAINING UNIT IN SUCH TERMS THERE IS NO SUBSTANTIAL DEPARTURE FROM THE BARGAINING RIGHTS PRESENTLY HELD BY THE INTERVENER. WHILE IN ONE SENSE SUCH A BARGAINING UNIT CONSTITUTES A DEPARTURE FROM THE BOARD'S PRACTICE RESPECTING GEOGRAPHIC AREAS, IT IS CLEAR IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE THAT TO RESTRICT THE GEOGRAPHIC AREA TO BOARD AREA NUMBER 8 WOULD CREATE A WHOLLY IMPRACTICABLE SITUATION IN WHICH ONE UNION MIGHT REPRESENT EMPLOYEES IN THE METROPOLITAN TORONTO AREA AND ANOTHER UNION WOULD REPRESENT THE SAME EMPLOYEES OUTSIDE THE METROPOLITAN TORONTO AREA.

HAVING REGARD THEN TO THE ABOVE CONSIDERATIONS, THE BOARD FINDS FURTHER THAT ALL EMPLOYEES IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE STAFF, WATCHMEN AND DRAFTING PERSONNEL, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

HAVING REGARD TO THE FACT THAT THIS IS AN APPLICATION UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT, THE BOARD DECLARES THAT EMPLOYEES WHEN WORKING AT THE RESPONDENT'S YARD ARE NOT INCLUDED IN THE BARGAINING UNIT.

11832-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93, (APPLICANT) V. VINCENT & Co. INC. (RESPONDENT).

6. THE GEOGRAPHIC AREA PROPOSED BY THE APPLICANT IN THIS CASE IS THAT NORMALLY GRANTED BY THE BOARD. THE RESPONDENT PROPOSES A PROJECT CERTIFICATION. SECTION 92(1) OF THE LABOUR RELATIONS ACT PROVIDES IN PART " ... THE BOARD SHALL DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING BY REFERENCE TO A GEOGRAPHIC AREA AND IT SHALL NOT CONFINE THE UNIT TO A PARTICULAR PROJECT". IN THESE CIRCUMSTANCES, THE BOARD FINDS FURTHER THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11829-66-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1250 (APPLICANT) V. NATIONAL CONSTRUCTION CORPORATION LIMITED (RESPONDENT).

THE APPLICANT HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION, DATED JUNE 8, 1966, DISMISSING THE APPLICATION ON THE GROUND THAT THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT WAS NOT FILED WITHIN THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. IN SUPPORT OF ITS REQUEST, THE APPLICANT HAS FILED A REGISTRATION SLIP WHICH CLEARLY SHOWS THAT THE ENVELOPE CONTAINING THE EVIDENCE OF MEMBERSHIP

WAS MAILED REGISTERED, IN OTTAWA, TO THE BOARD ON JUNE 7TH, 1966, THE TERMINAL DATE FOR THE APPLICATION. NORMALLY, THIS LETTER WOULD HAVE BEEN RECEIVED BY THE BOARD ON WEDNESDAY, JUNE 8TH, 1966. THERE WAS, IN FACT, NO EVIDENCE OF MEMBERSHIP RECEIVED BY THE BOARD BY REGISTERED MAIL ON JUNE 8TH, 1966, DUE NO DOUBT TO THE FACT THAT THE LETTER WAS ADDRESSED TO THE BOARD IN OTTAWA AND NOT IN TORONTO. ACCORDINGLY, THE BOARD DISMISSED THE APPLICATION ON THAT DATE.

THE RESPONDENT WAS NOTIFIED OF THE REQUEST FOR RECONSIDERATION AND WAS GIVEN AN OPPORTUNITY TO MAKE REPRESENTATIONS, BUT HAS FAILED TO DO SO.

IN THESE CIRCUMSTANCES AND HAVING REGARD TO SECTION 52 (1)(B) AND TO SECTION 50(1)(B) OF THE BOARD'S RULES OF PROCEDURE, IT IS CLEAR THAT THE EVIDENCE OF MEMBERSHIP WAS FILED WITH THE BOARD WITHIN THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE DECISION OF THE BOARD DATED JUNE 8, 1966 IS ACCORDINGLY REVOKED AND THE FOLLOWING SUBSTITUTED THEREFOR:

11837-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS -LOCAL 793 (APPLICANT) V. DEL BROCCO CONTRACTING LIMITED (RESPONDENT).

6. IT IS NOT THE PRACTICE OF THE BOARD TO JOIN TOGETHER IN ONE CERTIFICATE TWO OR MORE GEOGRAPHIC AREAS. SEE KOSMACK & PRICE LIMITED, O.L.R.B. MONTHLY REPORT, JULY 1965, P. 256 - 257. THE BOARD SEES NO REASON FOR DEPARTING FROM THIS PRACTICE IN THE PRESENT CASE.

ON THE OTHER HAND IT IS NOT UNUSUAL FOR THE BOARD TO ISSUE TWO OR MORE CERTIFICATES AS A RESULT OF ONE APPLICATION. SEE KEYSTONE CONTRACTORS LIMITED, O.L.R.B. MONTHLY REPORT, JUNE 1964, PPS. 109 AND 120.

11851-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION #2307 (APPLICANT) V. PAUL DAFOUST CONSTRUCTION LIMITED (RESPONDENT).

5. IT IS NOT THE PRACTICE OF THE BOARD TO PUT CARPENTERS' HELPERS IN THE SAME BARGAINING UNIT WITH CARPENTERS. THE LONG ESTABLISHED CARPENTERS' BARGAINING UNIT CONSISTS OF CARPENTERS AND INDENTURED CARPENTERS' APPRENTICES.

THE APPLICANT PROPOSES THE CITY OF CORNWALL AS THE GEOGRAPHIC AREA AND THE RESPONDENT AGREES WITH THIS PROPOSAL. ALTHOUGH THE BOARD WOULD NORMALLY GRANT A LARGER AREA, HAVING REGARD TO THE ABOVE CONSIDERATIONS AND TO THE AGREEMENT OF THE PARTIES WITH RESPECT TO THE AREA, THE BOARD FINDS FURTHER THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF CORNWALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11869-66-R: THE BRICKLAYERS', MASONS AND PLASTERERS' INTERNATIONAL UNION, LOCAL 33 (APPLICANT) V. JANKE CONSTRUCTION (RESPONDENT).

5. THE APPLICANT HAS PROPOSED THE COUNTIES OF GREY AND BRUCE AS AN APPROPRIATE GEOGRAPHIC AREA AND IN SUPPORT THEREOF RELIES ON A VOLUNTARY RECOGNITION STATEMENT SIGNED BY TWO EMPLOYERS. THE BOARD NOTES THAT THE PROPOSED AREA OVERLAPS AN ESTABLISHED BOARD AREA BY THE INCLUSION OF THE COUNTY OF BRUCE. THE SITUATION IS THUS NO DIFFERENT FROM WHAT IT WAS IN LEXINGTON CONTRACTING LIMITED, O.L.R.B. MONTHLY REPORT, DECEMBER 1965, P. 587 AND JIM FOULDS CONSTRUCTION LIMITED, O.L.R.B. MONTHLY REPORT, DECEMBER 1965, P. 587-588. WE ARE NOT PREPARED AT THIS TIME TO TAKE A STAND DIFFERENT FROM THAT TAKEN IN THOSE CASES. IN THESE CIRCUMSTANCES, AND AS A PURELY INTERIM MEASURE, THE BOARD, THEREFORE, FURTHER FINDS THAT ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN OWEN SOUND AND MEAFORD AND THE TOWNSHIPS OF KEPPEL, SARAWAK, DERBY, SYDENHAM AND ST. VINCENT IN THE COUNTY OF GREY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11904-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT)
V. KOPPERS OF CANADA LIMITED (RESPONDENT).

4. THE RESPONDENT FAILED TO FILE PAGE THREE OF FORM 61, REPLY TO APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY. HOWEVER, FROM THE CONTENTS OF THE REPLY AND ON THE BASIS OF ALL THE OTHER MATERIAL BEFORE US, THERE WOULD APPEAR TO BE NO NEED FOR THE BOARD TO HOLD A HEARING IN THIS CASE.

5. ALTHOUGH THE REPLY REFERS TO A COLLECTIVE AGREEMENT, THAT AGREEMENT IS BETWEEN THE INTERNATIONAL HOD CARRIERS', BUILDING AND COMMON LABORERS' UNION OF AMERICA AND A COMPANY SEPARATE AND DISTINCT FROM THE PRESENT RESPONDENT. FURTHERMORE, IT IS IN EFFECT WITHIN THE BOUNDARIES OF THE UNITED STATES.

STATISTICAL TABLES FOR JUNE 1966

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	JUNE 1966	1ST 3 MONTHS OF FISCAL YEAR 1966-67	1965-66
I. CERTIFICATION	112	276	280
II. DECLARATION TERMINATING BARGAINING RIGHTS	-	15	19
III. DECLARATION OF SUCCESSOR STATUS	-	2	5
IV. DECLARATION THAT STRIKE UNLAWFUL	1	5	22
V. DECLARATION THAT LOCK-OUT UNLAWFUL	-	-	-
VI. CONSENT TO PROSECUTE	6	33	19
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	10	29	41
VIII. MISCELLANEOUS	<u>8</u>	<u>16</u>	<u>19</u>
TOTAL	<u>137</u>	<u>376</u>	<u>405</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	JUNE 1966	1ST 3 MONTHS OF FISCAL YEAR 1966-67	1965-66
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	94	223	341

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY MAJOR TYPES

	NUMBER DISPOSED OF		
	JUNE 1966	1ST 3 MONTHS OF FISCAL YR. 1966-67	1965-66
I. CERTIFICATION	88	250	281
II. DECLARATION TERMINATING BARGAINING RIGHTS	9	17	18
III. DECLARATION OF SUCCESSOR STATUS	-	2	8
IV. DECLARATION THAT STRIKE UNLAWFUL	-	4	17
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	-	-
VI. CONSENT TO PROSECUTE	6	24	12
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	13	32	36
VIII. MISCELLANEOUS	<u>2</u>	<u>10</u>	<u>38</u>
TOTAL	<u>118</u>	<u>339</u>	<u>410</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>JUNE 1966</u>	<u>1ST 3 MONTHS 1966-67</u>	<u>FISCAL YR. 1965-66</u>	<u>JUNE 1966</u>	<u>1ST 3 MONTHS 1966-67</u>	<u>FISCAL YR. 1965-66</u>
<u>I. CERTIFICATION</u>						
GRANTED	62	174	214	764	3383	6764
DISMISSED	16	45	50	1576	2965	2609
WITHDRAWN	10	28	17	93	463	1238
TOTAL	<u>88</u>	<u>247</u>	<u>281</u>	<u>2433</u>	<u>6811</u>	<u>10611</u>
<u>II. TERMINATION OF BARGAINING RIGHTS</u>						
GRANTED	6	11	5	129	380	87
DISMISSED	3	6	11	49	140	232
WITHDRAWN	-	-	2	-	-	73
TOTAL	<u>9</u>	<u>17</u>	<u>18</u>	<u>178</u>	<u>520</u>	<u>392</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>JUNE 1966</u>	<u>1ST 3 MONTHS OF FISCAL YEAR 1966-67</u>	<u>1965-66</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	5
	DISMISSED	-	-	-
	WITHDRAWN	-	4	12
	TOTAL	-	4	17
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	-
	WITHDRAWN	-	-	-
	TOTAL	-	-	-
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	-	3	1
	DISMISSED	1	1	2
	WITHDRAWN	5	20	9
	TOTAL	6	24	12

TABLE V

REPRESENTATION VOTES RESULTING IN CERTIFICATION OR DISMISSAL OF CERTIFICATION

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	JUNE 1ST 3 MONTHS OF FISCAL YEAR 1966	1966-67	1965-66
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	2	6	8
POST-HEARING VOTE	2	10	9
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	1	2	1
POST-HEARING VOTE	5	16	6
BALLOTS NOT COUNTED	-	-	1
TOTAL	<u>10</u>	<u>34</u>	<u>25</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF

BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	JUNE 1ST 3 MONTHS OF FISCAL YEAR 1966	1966-67	1965-66
*RESPONDENT UNION SUCCESSFUL	3	3	1
RESPONDENT UNION UNSUCCESSFUL	<u>6</u>	<u>9</u>	<u>5</u>
TOTAL	<u>9</u>	<u>12</u>	<u>6</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JULY 1966

BARGAINING AGENTS CERTIFIED DURING JULY

NO VOTE CONDUCTED

11809-66-R: INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA)
{(APPLICANT) v. R. F. FRY & ASSOCIATES LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES
(OBJECTORS)}.

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN SHAFT SINKING, DEVELOPMENT AND MINING IN THE TOWNSHIP OF LEVACK AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT FOREMEN, SHIFT BOSSES, CAPTAINS, PERSONS ABOVE THE RANK OF FOREMAN, SHIFT BOSS OR CAPTAIN, OFFICE AND ENGINEERING STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (32 EMPLOYEES IN THE UNIT).

11836-66-R: THE OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 343
(APPLICANT) v. THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS - LOCAL UNION No. 700 (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SARNIA AND LONDON, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR."
(4 EMPLOYEES IN THE UNIT).

11839-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL No. 721 (APPLICANT) v. MOLLENHAUER CONTRACTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(5 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 249).

11840-66-R: TORONTO MOTION PICTURE FILM EXCHANGE EMPLOYEES UNION, LOCAL No. B73, OF INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA (APPLICANT) v. VICTORIA SHIPPING SERVICE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (15 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 252).

11849-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 79 (APPLICANT) v. METROPOLITAN TORONTO EMERGENCY MEASURES ORGANIZATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT ZONE CONTROLLER GRADE II, PERSONS ABOVE THE RANK OF ZONE CONTROLLER GRADE II AND ONE SECRETARY TO EACH OF THE

FOLLOWING: DIRECTOR, DEPUTY DIRECTOR AND ADMINISTRATOR." (26 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11854-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS (APPLICANT) V. IMPERIAL PAVING CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF THE CITIES OF KITCHENER AND WATERLOO AND ALL OF THE TOWNSHIP OF WATERLOO EXCEPTING THAT PORTION OF TOWNSHIP LYING SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF WATERLOO WELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD; THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTHWESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD NO. 6; THEN ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP, ENGAGED IN THE OPERATION OF CRANES SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT)

(SEE INDEXED ENDORSEMENT PAGE 253).

11873-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. LAURENTIAN REALTIES COMPANY LIMITED (OTTAWA) (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE BOILER ROOM OF THE RESPONDENT AT ITS PREMISES KNOWN AS THE SIR WILFRED LAURIER BUILDING AT 340 LAURIER STREET WEST, OTTAWA, SAVE AND EXCEPT THE CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

11894-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1250 (APPLICANT) V. DOUGLAS BREMNER CONTRACTORS & BUILDERS LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (33 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 256).

11896-66-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL UNION 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS OF AMERICA (APPLICANT) V. H. FINE & SONS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 1000 BELFAST ROAD, OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (41 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11898-66-R: HOTEL, MOTEL AND RESTAURANT EMPLOYEES' UNION, A.F.L.-C.I.O.-C.L.C. LOCAL 899 (APPLICANT) V. AVENIDA HOTEL ENTERPRISES LIMITED, CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF NEW PARKWAY HOTEL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS NEW PARKWAY HOTEL AT CORNWALL, SAVE AND EXCEPT CHEF, BAR MANAGER, PERSONS ABOVE THE RANK OF CHEF AND BAR MANAGER AND OFFICE STAFF." (20 EMPLOYEES IN THE UNIT).

11902-66-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO (APPLICANT) V. GENERAL INSTRUMENT OF CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OWEN SOUND, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN OR SUPERVISOR, QUALITY CONTROL PERSONNEL, OFFICE, TECHNICAL AND SALES STAFF." (147 EMPLOYEES IN THE UNIT).

11903-66-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. INDUSTRIAL WINDOW CLEANERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (13 EMPLOYEES IN THE UNIT).

11905-66-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. A. COTÉ - CONTRACTOR (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS BUSH OPERATIONS IN THE TOWNSHIPS OF PINE AND AURORA AND THOSE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND SCALERS." (23 EMPLOYEES IN THE UNIT).

THE APPLICANT SEEKS A BARGAINING UNIT THE PROSED GEOGRAPHIC LIMITATION OF WHICH IS THE WHOLE OF THE DISTRICT OF COCHRANE. A SIMILAR APPLICATION WAS RECENTLY DEALT WITH IN THE HOWARD BIENVENUE INCORPORATED CASE, BOARD FILE NUMBER 11781-66, IN WHICH THE BOARD'S CURRENT PRACTICE WITH RESPECT TO GEOGRAPHIC LIMITATIONS IN REGARD TO WOODS OPERATIONS IS SET OUT. THERE ARE NO SPECIAL CIRCUMSTANCES EVIDENT IN THIS CASE WHICH WOULD INCLINE THE BOARD TO DEPART FROM THE POLICY OUTLINED IN THE BIENVENUE CASE.

11906-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PICKERING DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PICKERING, SAVE AND EXCEPT MAINTENANCE SUPERVISOR, PERSONS ABOVE THE RANK OF MAINTENANCE SUPERVISOR, SUPERVISOR OF CHIEF CARETAKERS AND CARETAKING STAFF, PERSONS ABOVE THE RANK OF SUPERVISOR OF CHIEF CARETAKERS AND CARETAKING STAFF, OFFICE AND PROFESSIONAL TEACHING STAFF." (20 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11907-66-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938, GENERAL TRUCK DRIVERS (APPLICANT) V. IRELAND CARTAGE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

11912-66-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ANTHONY'S CARTAGE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (14 EMPLOYEES IN THE UNIT).

11913-66-R: LOCAL UNION 120, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. SERVICE LAMP CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, GUARDS, OFFICE AND SALES STAFF." (95 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE TERM "FOREMAN" INCLUDES UNIT SUPERVISOR AND SHIPPING CLERK.

11917-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. KRALINATOR FILTERS LIMITED (RESPONDENT) V. CANADIAN STEELWORKERS' UNION KRALINATOR DIVISION NO. 1, N.C.C.L. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (41 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 257).

11923-66-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, A.F.L.-C.I.O.-C.L.C. LOCAL UNION, 269 (APPLICANT) V. QUINTE ROOFING LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, ENGAGED IN ROOFING AND WATERPROOFING, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN CERTAIN SHEET METAL CONTRACTORS AND SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, A.F.L.-C.I.O. LOCAL UNION 269 EFFECTIVE JANUARY 1, 1966 AND OFFICE STAFF." (14 EMPLOYEES IN THE UNIT).

11931-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. LAURENTIAN REALTIES COMPANY LIMITED (OTTAWA) (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOM AT 305 RIDEAU STREET IN OTTAWA." (3 EMPLOYEES IN THE UNIT).

11933-66-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL UNION 46 (APPLICANT) V. MOORE & BARRAN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE INSTALLATION AND SERVICING OF COMBUSTION EQUIPMENT AND ACCESSORIES WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT SERVICE MANAGER, PERSONS ABOVE THE RANK OF SERVICE MANAGER AND OFFICE STAFF." (16 EMPLOYEES IN THE UNIT).

11937-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN JAMIESON MINES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE TOWNSHIPS OF JAMIESON AND GODFREY, SAVE AND EXCEPT SHIFT BOSSES AND FOREMEN, PERSONS ABOVE THE RANK OF SHIFT BOSS AND FOREMAN, OFFICE STAFF AND SECURITY GUARDS." (117 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11941-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. SOMERVILLE AUTOMOTIVE TRIM LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SECURITY GUARDS, OFFICE AND SALES STAFF." (18 EMPLOYEES IN THE UNIT).

11942-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. SOMERVILLE INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SECURITY GUARDS, OFFICE AND SALES STAFF." (33 EMPLOYEES IN THE UNIT).

11943-66-R: LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS INTERNATIONAL UNION, LOCAL 351 (APPLICANT) V. STORK DIAPER SERVICE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, DRIVER SALESMEN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (51 EMPLOYEES IN THE UNIT).

11944-66-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CITY WIDE WINDOW CLEANERS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (18 EMPLOYEES IN THE UNIT).

11946-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 124 (APPLICANT) V. KOMO CONCRETE FINISHING LTD. (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP) RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11948-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE TORONTO PUBLIC LIBRARY BOARD (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS MAINTENANCE AND CARE-TAKING DEPARTMENT AT TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (58 EMPLOYEES IN THE UNIT).

11952-66-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 1904 (APPLICANT) V. CAPCO DECORATORS LIMITED (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

11953-66-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 1904 (APPLICANT) V. JOS. LEFEBVRE PAINTING (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

11954-66-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 1904 (APPLICANT) V. PRYCE CONTRACTING COMPANY (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

11955-66-R: THE METHODS, WAGE RATE AND SENIOR COST TECHNICIANS ASSOCIATION OF ONTARIO, LOCAL 166, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. JAMES HOWDEN AND PARSONS OF CANADA, LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER).

UNIT: "ALL INSPECTORS IN THE EMPLOY OF THE RESPONDENT IN ITS INSPECTION DEPARTMENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT CHIEF INSPECTOR AND PERSONS ABOVE THE RANK OF CHIEF INSPECTOR." (10 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 260).

11957-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. TREMBLAY INSTALLATION INC. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

11958-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. WIKSTROM LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

11961-66-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938, GENERAL TRUCK DRIVERS (APPLICANT) V. PETERBOROUGH READY MIXED CONCRETE SUPPLY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

11964-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 (APPLICANT) V. CHUBB-MOSLER AND TAYLOR SAFES LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 678 INTERNATIONAL CHEMICAL WORKERS' UNION DATED JUNE 20, 1966." (7 EMPLOYEES IN THE UNIT).

11979-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. PERRY WILSON CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY (EXCEPTING THEREFROM THE TOWNSHIPS OF NORMANBY,

EGREMONT AND PROTON), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11980-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ROBERTSON-YATES CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

11983-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. NORTHERN CONSTRUCTION COMPANY & J. W. STEWART LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF KENORA ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (29 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 261).

11984-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 607 (APPLICANT) V. NORTHERN CONSTRUCTION COMPANY & J. W. STEWART LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 261).

11985-66-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. TAORMINA BAKERY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 84 OAKDALE ROAD, METROPOLITAN TORONTO SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, DRIVER-SALESMEN, OFFICE STAFF AND SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11988-66-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. MOSS PARK MEAT MARKET (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

11990-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)
V. CANADIAN ICE MACHINE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF SIMCOE ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(2 EMPLOYEES IN THE UNIT).

11991-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)
V. PITCHFORD CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(2 EMPLOYEES IN THE UNIT).

11996-66-R: OIL CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V.
FINA CENTRES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WAREHOUSE ON YORK MILLS ROAD, METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (16 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES) .

12007-66-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSE-MEN AND HELPERS OF AMERICA (APPLICANT) V. SPOTLESS WINDOW CLEANING COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

12013-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 1081 (APPLICANT) V. PERRY WILSON CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY (EXCEPTING THEREFROM THE TOWNSHIPS OF NORMANBY, EGREMONT AND PROTON), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(6 EMPLOYEES IN THE UNIT).

12018-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT)
V. CONCRETE COLUMN CLAMPS (1961) LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LANARK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

THE BOARD IS NOT PREPARED AT THIS TIME TO VARY GEOGRAPHIC AREA NUMBER THIRTEEN.

12022-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. CONVERTO EQUIPMENT MANUFACTURING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (18 EMPLOYEES IN THE UNIT).

12029-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. KING PAVING & MATERIALS LIMITED, CONSTRUCTION DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULL-DOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT).

12037-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 183 (APPLICANT) v. C. H. HEIST (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS, AND SHOP AND YARD EMPLOYEES." (5 EMPLOYEES IN THE UNIT).

12038-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) v. A. J. WING CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

11852-66-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. WEBSTER AIR EQUIPMENT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (34 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	29
NUMBER OF PERSONS WHO CAST BALLOTS	29
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	15
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	14

11861-66-R: UNION OF CANADIAN RETAIL EMPLOYEES (APPLICANT) v. LOBLAW GROCETERIAS Co., LIMITED (RESPONDENT) v. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (INTERVENER #1) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER #2) v. LOBLAW WAREHOUSE EMPLOYEES' COUNCIL (INTERVENER #3).

UNIT: "ALL WAREHOUSE AND MANUFACTURING EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS AND BETWEEN THE RESPONDENT AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796." (567 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	552
NUMBER OF PERSONS WHO CAST BALLOTS	556
NUMBER OF SPOILED BALLOTS	2
BALLOTS SEGREGATED AND	
NOT COUNTED	23
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	490
NUMBER OF BALLOTS MARKED IN FAVOUR OF	
LOBLAW WAREHOUSE EMPLOYEES' COUNCIL	41

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

11612-66-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO (APPLICANT) v. GENERAL INSTRUMENT OF CANADA LTD. (RESPONDENT) v. GENERAL INSTRUMENT, MOUNT FOREST EMPLOYEES' UNION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MOUNT FOREST, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN OR SUPERVISOR, OFFICE AND SALES STAFF." (95 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	83
NUMBER OF PERSONS WHO CAST BALLOTS	81
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	34
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	46

(INTERVENER CERTIFIED)

(APPLICANT DISMISSED).

11796-66-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) v. LAKE OF THE WOODS MOTORS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KENORA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	1

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JULY

No VOTE CONDUCTED

11497-65-R: BRICKLAYERS' & TILESETTERS' LOCAL UNION No. 2, ONTARIO AFFILIATED WITH THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (APPLICANT) v. 20TH CENTURY MASONRY COMPANY (RESPONDENT) v. BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA LOCAL 1 (INTERVENER).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASON APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (21 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 241).

11925-66-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) v. DIANA SWEETS LTD. (RESPONDENT). (8 EMPLOYEES).

11930-66-R: LOCAL 280 OF THE HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION A.F.L. - C.I.O. - C.L.C. (APPLICANT) v. DOMINION SPORTSERVICE LIMITED (RESPONDENT). (47 EMPLOYEES).

11936-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. G & H STEEL SERVICE OF CANADA LTD. (RESPONDENT) (5 EMPLOYEES).

11968-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. DI LORENZO CONSTRUCTION COMPANY (RESPONDENT). (24 EMPLOYEES).

11974-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) v. REGIS CONCRETE FORMING LIMITED (RESPONDENT). (33 EMPLOYEES).

11975-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. ACU FORMING LIMITED (RESPONDENT). (56 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

11515-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. FEDERAL BOLT & NUT CORPORATION LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (82 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	79
NUMBER OF PERSONS WHO CAST BALLOTS	79
NUMBER OF SPOILED BALLOTS	1
BALLOTS SEGREGATED AND NOT COUNTED	2
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	30
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	46

11761-66-R: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. COOPER-WEEKS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS PLANT AT 260 LAUGHTON AVENUE, TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (197 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	178
NUMBER OF PERSONS WHO CAST BALLOTS	147
NUMBER OF SPOILED BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	70
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	73

11794-66-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. WADE INTERNATIONAL LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DRAFTSMEN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	22
NUMBER OF PERSONS WHO CAST BALLOTS	22

NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	20

11837-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS -LOCAL 793 (APPLICANT)
V. DEL BROCCO CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	4	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JULY

11857-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)
V. HECKETT ENGINEERING COMPANY (RESPONDENT). (30 EMPLOYEES).

11876-66-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA,
LOCAL UNION 1630, SIGN AND PICTORIAL (APPLICANT) V. DAY SIGN COMPANY LIMITED
(RESPONDENT). (27 EMPLOYEES).

11935-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V.
McNAMARA CORPORATION LTD. (RESPONDENT). (9 EMPLOYEES).

11947-66-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION AFL-CIO-CLC
(APPLICANT) V. THE JOCKEY CLUB LIMITED (RESPONDENT).

11962-66-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS, LOCAL 938, GENERAL TRUCK DRIVERS (APPLICANT) V. PERMANENT CONCRETE
LIMITED (RESPONDENT). (8 EMPLOYEES).

11973-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION
1190 (APPLICANT) V. REGIS CONCRETE FORMING LIMITED (RESPONDENT). (12 EMPLOYEES).

11976-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION
1190 (APPLICANT) V. ACU-FORMING LIMITED (RESPONDENT). (18 EMPLOYEES).

11977-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION No. 721 (APPLICANT) V. REGIS CONCRETE FORMING LIMITED (RESPONDENT). (10 EMPLOYEES).

11978-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION No. 721 (APPLICANT) V. ACU FORMING LIMITED (RESPONDENT). (7 EMPLOYEES).

11995-66-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 504 (APPLICANT) V. AIR - FLO HEATING LIMITED (RESPONDENT). (4 EMPLOYEES).

12025-66-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. BALDESARO & MCGREGOR (RESPONDENT). (32 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING JULY

11716-66-R: CORNELIUS PETER LAK (APPLICANT) V. GLAZIERS' LOCAL UNION 1819 OF THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA (RESPONDENT) V. PILKINGTON GLASS LIMITED (INTERVENER). (DISMISSED).

UNIT: "ALL EMPLOYEES OF THE INTERVENER ENGAGED IN THE GLASS, GLAZING AND METAL WORK INSTALLATION IN METROPOLITAN TORONTO AND VICINITY, ON ALL OUTSIDE JOBS, SAVE AND EXCEPT OFFICE STAFF AND SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (47 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

NUMBER OF PERSONS WHO CAST BALLOTS

NUMBER OF SPOILED BALLOTS

NUMBER OF BALLOTS MARKED IN FAVOUR

OF RESPONDENT

NUMBER OF BALLOTS MARKED AGAINST

RESPONDENT

46

1

31

14

11717-66-R: KARL CRAWFORD CAMERON (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES (LOCAL 831) (RESPONDENT) V. THE CORPORATION OF THE COUNTY OF PEEL (INTERVENER). (GRANTED).

- AND -

11718-66-R: FREDERICK GEORGE WOOLLETT (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES (LOCAL 831) (RESPONDENT) V. THE CORPORATION OF THE COUNTY OF PEEL (INTERVENER). (GRANTED)

- AND -

11719-66-R: HOWARD STANLEY BURK (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES (LOCAL 831) (RESPONDENT) V. THE CORPORATION OF THE COUNTY OF PEEL (INTERVENER). (GRANTED).

(THE ABOVE MATTERS ARE CONSOLIDATED).

UNIT: "ALL EMPLOYEES OF THE INTERVENER EMPLOYED AT ITS JAIL IN BRAMPTON, ONTARIO SAVE AND EXCEPT CHIEF TURNKEY, PERSONS ABOVE THE RANK OF CHIEF TURNKEY, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN AN AVERAGE OF TWENTY-FOUR (24) HOURS PER WEEK." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	11

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING JULY

11951-66-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) V. CHARLES DUNCAN, AND TORONTO AND DISTRICT COUNCIL OF CARPENTERS AND MILLMEN, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 261).

12044-66-U: CRUMP SHEET METALS LIMITED (APPLICANT) V. PETER HASKEY, DONALD McMACHEN, ARTHUR BODEN, JAMES E. HUGHES, JOHN BOWIE, RICHARD T. WOOD, A. BONNARD, KEITH YAKELEY, LARRY L. MYERS, WILLIAM LYMAN, JACQUES ROBITAILLE, WILLIAM WALLACE MAY, JOHN BATZ, JAMES TAYLOR, O. ZANNESE, WILLIAM GOUGH, ALFRED J. COMPTON, NORMA CLIFF, HARRY BERGA, JOSEPH HAWKINS, R. BELISLE, E. ROBINSON, GEORGE BOUDAH, BERT PELL, FRED MASON, DAVID J. MONTGOMERY, WALTER PENDRIGH, ROBERT CORKEN, ALLAN F. BUDWAY, VICTOR BLACKWELL, PATRICK WILLIAMS, JAMES V. AGNEW, DONALD EAMES, WALTER A. SILVER, N. HACHEY, A. STEWART, RONALD SCOTT, NEIL PRICE, WILLIS NEWTON, T. HANNIGAN, O. FLETCHER, ALBERT RENTON, MR. L. WILLIAMS, ROY FOX, WILLIAM FARLEY, TOM MAXWELL, TED MAJOOR, A. LAMOUREUX, R. CAPPADOCIA, JOHN PAUL COOK, WILLIAM FARRELL, W. E. M. HARRISON, PATRICK J. DONOVAN, F. BAHR. (RESPONDENTS). (GRANTED)

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JULY

11818-66-U: BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 483, SAULT STE. MARIE, ONTARIO (APPLICANT) V. ROSSI'S BAKERY LIMITED, 674 ALBERT STREET WEST, SAULT STE. MARIE, ONTARIO (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 266).

11956-66-U: ROY CONSTRUCTION & SUPPLY COMPANY LIMITED (APPLICANT) V. THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (RESPONDENT). (WITHDRAWN).

11966-66-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ROBERT PIPER (RESPONDENT). (WITHDRAWN).

11967-66-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TORONTO PUBLIC LIBRARY BOARD (RESPONDENT). (WITHDRAWN).

11969-66-U: TWO STAR PLASTERING LIMITED (APPLICANT) V. CHARLES W. IRVINE (RESPONDENT). (WITHDRAWN).

11998-66-U: BARTON TUBES LIMITED (APPLICANT) V. HARLEY ROBINSON ET AL (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING JULY

11763-66-U: LOCAL UNION NUMBER 280, INTERNATIONAL BEVERAGE DISPENSERS' AND BARTENDERS' UNION (COMPLAINANT) V. DOMINION SPORTSERVICE LIMITED (RESPONDENT).

11890-66-U: HOTEL & RESTAURANT EMPLOYEES' & BARTENDERS INTERNATIONAL UNION, LOCAL 197, HAMILTON, ONTARIO (COMPLAINANT) V. WENTWORTH HOUSE, 365 WENTWORTH ST. NORTH, HAMILTON, ONTARIO (RESPONDENT).

11900-66-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (COMPLAINANT) V. THOMAS G. GOULD (RESPONDENT).

11922-66-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 120 (COMPLAINANT) V. SERVICE LAMP COMPANY LTD. (RESPONDENT).

11989-66-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. HEATH AND SHERWOOD DRILLING LIMITED (RESPONDENT).

12015-66-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. FRANCOZ METAL CORPORATION LIMITED (RESPONDENT).

APPLICATION FOR ADDITION OF A PROVISION TO A COLLECTIVE AGREEMENT PURSUANT TO SECTION 33(2) DISPOSED OF DURING JULY

11860-66-M: NESTLE (CANADA) LTD. (APPLICANT) V. UNITED DAIRY & CREAMERY WORKERS - LOCAL 488 (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 268).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

11845-66-M: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204, A.F. OF L. C.I.O., C.L.C., AND BRANTFORD GENERAL HOSPITAL (APPLICANTS) V. GROUP OF EMPLOYEES (OBJECTORS).

(SEE INDEXED ENDORSEMENT PAGE 269).

11879-66-M: MOFFATS, LIMITED, APPLIANCE DIVISION, AND THE CANADIAN UNION OF OPERATING ENGINEERS. LOCAL 101 (APPLICANTS).

APPLICATION UNDER SECTION 63 (FINANCIAL STATEMENT REQUESTED BY TRADE UNION MEMBER) DISPOSED OF DURING JULY

11485-65-M: GERALD O'NEILL (COMPLAINANT) V. LOCAL 93, U. B. OF C. & J. OTTAWA (RESPONDENT).

APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING JULY

10386-65-M: OFFICE EMPLOYEES INTERNATIONAL UNION LOCAL #81 (APPLICANT) V. CANADIAN CAR FORT WILLIAM DIVISION HAWKER SIDDELEY CANADA LTD. (RESPONDENT).

REFERENCE TO BOARD PURSUANT TO SECTION 79A OF THE ACT DISPOSED OF DURING JULY

11872-66-M: UNITED TEXTILE WORKERS OF AMERICA (TRADE UNION) V. LONG SAULT FABRIC LIMITED (EMPLOYER).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION

11928-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. JOESUG REALTY LTD. (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 278).

INDEXED ENDORSEMENTS - CERTIFICATION

11448-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. VILLAGE CONTRACTORS (RESPONDENT) V. BRICKLAYERS MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE, J. DILLON, E. LINESS AND M. TOPPAN FOR THE APPLICANT; W. FRAM FOR THE RESPONDENT AND LLOYD D. CADSBY FOR THE OBJECTORS.

DECISION OF THE BOARD: (JULY 28, 1966).

THIS IS AN APPLICATION FOR CERTIFICATION. AS ANNOUNCED DURING THE COURSE OF THE HEARINGS IN THIS MATTER WHICH COMMENCED ON MARCH 10, 1966 AND CONTINUED, AT INTERVALS, UNTIL JULY 15, 1966, THE RESPONDENT FILED A LIST OF EMPLOYEES IN THE PROPOSED BARGAINING UNIT CONTAINING TWENTY-SEVEN NAMES, THE APPLICANT FILED EVIDENCE OF MEMBERSHIP FOR SIXTEEN PERSONS SHOWN ON THE EMPLOYER'S LIST, AND NINETEEN PERSONS (HEREINAFTER REFERRED TO AS OBJECTORS) WHOSE NAMES APPEAR ON THE SAID LIST. THE APPLICANT FILED INDIVIDUAL LETTERS (HEREINAFTER REFERRED TO AS PETITIONS) OBJECTING TO THE

APPLICATION. ELEVEN OF THE SIXTEEN EMPLOYEES FOR WHOM THE APPLICANT FILED EVIDENCE OF MEMBERSHIP ARE OBJECTORS.

THE BOARD HAS ALREADY ISSUED A NUMBER OF DECISIONS IN THIS CASE (DATED MARCH 17, APRIL 4, APRIL 20, MAY 4, MAY 16, MAY 30, JUNE 10, JUNE 21, JUNE 29, AND JULY 7) IN WHICH THE HISTORY OF THE PROCEEDINGS ARE SET OUT AND THE ISSUES DEFINED. IT IS THEREFORE UNNECESSARY TO REVIEW THESE MATTERS AT THIS STAGE, OTHER THAN TO OBSERVE THAT THE INTERVENER SHOWN IN THE STYLE OF CAUSE (HEREIN- AFTER REFERRED TO AS LOCAL #1) IS NO LONGER A PARTY HAVING WITHDRAWN ITS INTER- VENTION BY LETTER DATED, MARCH 28, 1966. IT SHOULD PERHAPS ALSO BE NOTED THAT COUNSEL FOR THE OBJECTORS WITHDREW (AS COUNSEL) AT THE SAME TIME BUT SUBSEQUENTLY AGAIN WAS RETAINED AND APPEARED AT THE HEARING HELD ON JUNE 21, 1966, AND THERE- AFTER.

THE MATTERS PRESENTLY BEFORE THE BOARD FOR DECISION RELATE TO (A) THE WEIGHT TO BE GIVEN THE PETITIONS, (B) A MOTION BY THE APPLICANT UNDER SECTION 7(5) OF THE LABOUR RELATIONS ACT, (C) AN ALLEGATION OF THE RESPONDENT RESPECTING THE STATUS OF THE APPLICANT, AND (D) AN ALLEGATION BY THE RESPONDENT THAT THE APPLICANT MADE A FRAUDULENT STATEMENT IN ITS APPLICATION. FOR THE RECORD IT IS POINTED OUT THAT THE PARTIES AGREED THAT THE BOARD SHOULD PROCEED TO DETERMINE THESE MATTERS EVEN THOUGH, DEPENDING ON THE BOARD'S DECISION, NOT ALL ISSUES IN THE CASE ARE NECESSARILY COMPLETE AND FURTHER HEARINGS, THEREFORE, POSSIBLE. ON THE ISSUES BEFORE US FOR DECISION THE BOARD HAS HEARD EXTENSIVE EVIDENCE AND ARGUMENT.

DEALING, FIRSTLY, WITH (C), THE EVIDENCE FAILS TO DISCLOSE ANY DEFECT IN THE STATUS OF THE APPLICANT AS WAS IN FACT CONCEDED BY COUNSEL FOR THE RESPONDENT FOLLOWING THE TESTIMONY OF LINESS. WITH RESPECT TO (D) THE RESPONDENT WAS NOT IN A POSITION TO OFFER EVIDENCE ON THIS POINT WHEN CALLED ON TO DO SO AND AN ADJOURN- MENT WAS REFUSED ORALLY AT THE HEARING HAVING REGARD TO ALL THE CIRCUMSTANCES. THERE IS NOTHING IN THE EVIDENCE OF LINESS, OR FOR THAT MATTER, IN ANY OF THE EVIDENCE BEFORE US, WHICH WOULD SUPPORT THE ALLEGATION OF FRAUD AND THE BOARD, ACCORDINGLY, SO FINDS.

HAVING REGARD THEN TO THE ABOVE CONSIDERATIONS AND TO ALL THE EVIDENCE BEFORE US THE BOARD FINDS:

1. THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT;
2. THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

THERE IS NO DISPUTE BETWEEN THE PARTIES ON THE DESCRIPTION OF THE BARGAIN- ING UNIT. THE BOARD THEREFORE FINDS FURTHER THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND

EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

WE TURN NOW TO A CONSIDERATION OF THE MATTER SET OUT IN (A) ABOVE, THAT IS, THE WEIGHT TO BE GIVEN THE PETITIONS. ONLY ELEVEN OF THE NINETEEN OBJECTOR GAVE EVIDENCE RESPECTING THE PETITIONS AND OF THESE ELEVEN, EIGHT WERE CLAIMED AS MEMBERS BY THE APPLICANT. HOWEVER, WE PROPOSE TO DEAL WITH ALL ELEVEN PETITIONS BECAUSE TO DO OTHERWISE WOULD NECESSITATE REVEALING THOSE WHO SIGNED APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT UNION.

THE BOARD'S PROVISIONS AND RULES RESPECTING STATEMENTS OF DESIRE (IN THIS CASE CALLED PETITIONS) ARE TO BE FOUND IN SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, SECTIONS 11 AND 74 AND FORMS 5 AND 57 OF THE BOARD'S RULES OF PROCEDURE. THIS BEING A CONSTRUCTION INDUSTRY CASE, SECTION 74 AND FORM 57 ARE APPLICABLE. IT IS CLEAR FROM BOTH SECTION 74 AND FORM 57 THAT THE BOARD IS VITALLY CONCERNED WITH "THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE STATEMENT OF DESIRE". INDEED, EVERY INQUIRY CONDUCTED BY THE BOARD RESPECTING PETITIONS BEGINS WITH QUESTIONS RELATING TO THEIR ORIGIN. AS WAS SAID BY THE BOARD IN TAPLEN CONSTRUCTION LIMITED, O.L.R.B. MONTHLY REPORT, NOVEMBER, 1965, P. 542 AT PP. 544-45 " "...WHERE OBJECTIONS IN WRITING, SIGNED BY EMPLOYEES, ARE FILED WITH THE BOARD, FIRST-HAND EVIDENCE IS REQUIRED TO BE PRODUCED AT A HEARING WITH RESPECT TO THE ORIGINATION MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED. THE PURPOSE OF SUCH EVIDENCE IS TO ASCERTAIN WHETHER THE DOCUMENTARY EVIDENCE IN QUESTION REPRESENTS A VOLUNTARY EXPRESSION OF OPINION, FREE FROM THE INFLUENCE OF MANAGEMENT, ON THE PART OF THOSE SIGNING THE DOCUMENTS. THE PERSONS WHO TESTIFY ON THESE MATTERS ARE THOSE WHO HAVE PREPARED AND CIRCULATED THE DOCUMENTS IN QUESTION." (EMPHASIS ADDED.)

THIS CONCERN WITH RESPECT TO PREPARATION OF PETITIONS IS MADE CLEAR IN THE MERCHANTS PAPER COMPANY (WINDSOR) LIMITED CASE, O.L.R.B. MONTHLY REPORT, APRIL, 1965, PP. 12-13, WHERE THE BOARD SAID: "HOWEVER, IN FAILING TO ADDUCE ANY EVIDENCE AS TO THE CIRCUMSTANCES SURROUNDING THE ACTUAL PREPARATION OF THE DOCUMENTS THE EMPLOYEES WHO APPEARED IN SUPPORT OF THE PETITION HAVE FAILED TO MEET THE BOARD'S EVIDENTIARY REQUIREMENTS CONCERNING THE ORIGINATION OF THE PETITION (SEE WEYERHAUSER CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1964, P. 599) (EMPHASIS ADDED.) SEE ALSO CHERNEY BROS. LIMITED, O.L.R.B. MONTHLY REPORT, JANUARY, 1965, P. 525.

THESE CASES MAKE IT ABUNDANTLY CLEAR THAT THE REQUIREMENT OF EVIDENCE OF ORIGINATION GOES FURTHER THAT THE ORIGINATION AND MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED AS ARGUED BY COUNSEL FOR THE RESPONDENT. IN ALL THE CASES REFERRED TO THE EVIDENCE WENT THAT FAR AND INDEED IN SOME, EVEN FURTHER, AS FOR EXAMPLE IN CHERNEY BROS. LIMITED. THE PROBLEM IN THE OTHER THREE CASES WAS THE LACK OF FIRST-HAND EVIDENCE RESPECTING THE ACTUAL PREPARATION OF THE DOCUMENTS IN QUESTION. THE REMINGTON RAND CASE, (1956), C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, ¶16,055, C.L.S. 76-530, ALTHOUGH A CASE DEALING WITH TERMINATION OF BARGAINING RIGHTS, SERVES AS AN ILLUSTRATION OF THE NECESSITY OF HEARING FIRST-HAND EVIDENCE OF PREPARATION OF DOCUMENTS SUCH AS WE ARE CONSIDERING IN THIS CASE.

IN CONSIDERING THE EVIDENCE OF ORIGINATION OF THE PETITIONS IT IS CLEAR THAT WITH THE EXCEPTION OF THE EVIDENCE OF FALCO, THERE IS NO DIRECT EVIDENCE BEFORE THE BOARD AS TO WHO PREPARED THE NINETEEN PETITIONS. REGARDLESS OF WHERE

THE DOCUMENTS WERE SIGNED, THE OTHER TEN OBJECTORS ALL TESTIFIED EITHER THAT THEY FOUND THE PETITIONS ALREADY PREPARED WHEN PRESENTED TO THEM FOR THEIR SIGNATURES OR THAT THEY WERE NOT PRESENT WHEN THEY WERE PREPARED OR THAT THEY DID NOT KNOW WHO PREPARED THEM. THE PERSON OR PERSONS WHO PREPARED THEM WERE NOT CALLED AS WITNESSES.

FALCO TESTIFIED THAT THE PETITION HE SIGNED WAS TYPED BY JOHN MEORIN, WHO APPEARED BEFORE THE BOARD AS A REPRESENTATIVE OF LOCAL #1. HE FURTHER TESTIFIED THAT HE SIGNED THE PETITION, IDENTIFIED AT THE HEARING AS L 2, AT THE LOCAL #1 OFFICE, AND THAT HE SUBSEQUENTLY GAVE IT TO HIS WIFE TO MAIL. HE COULD ADVANCE NO REASON WHY, HAVING REGARD TO WHERE HE LIVED, HIS WIFE WOULD MAIL THE LETTER AT AN ISLINGTON POST OFFICE NOR DID HE HAVE OR SEE THE REGISTRATION RECEIPT FOR THE LETTER. MR. FALCO IS UNABLE TO READ ENGLISH. FURTHER THERE IS THE VERY CLEAR EVIDENCE OF REA THAT HE OBSERVED FALCO SIGN A PETITION SIMILAR TO THE ONE REA SIGNED, AT A MEETING (DESCRIBED BELOW) HELD AT THE COMPANY OFFICE. VECCHI, CALLED BY THE APPLICANT ON THE QUESTION OF FALCO'S CREDIBILITY, GAVE SIMILAR TESTIMONY. WE FOUND REA TO BE A TRUTHFUL AND PRECISE WITNESS NOT GIVEN TO OVER-STATEMENT. VECCHI WAS CERTAINLY UNSHAKEN IN CROSS-EXAMINATION. MOREOVER, ALTHOUGH FALCO WAS PRESENT WHEN BOTH REA AND VECCHI TESTIFIED AND WAS IDENTIFIED BY THEM, HE WAS NOT CALLED IN REPLY.

FINALLY, THE POST OFFICE REGISTRATION NUMBER AND DATE APPEARING ON THE ENVELOPE CONTAINING FALCO'S PETITION, NAMELY, "ISLINGTON, SUB. NO. 1, # 80, FEB. 26, 1966", IS VERY CLOSE TO THE POST OFFICE REGISTRATION NUMBERS OF ENVELOPES BEARING OTHER PETITIONS ADMITTEDLY SIGNED AT THE COMPANY OFFICE AND LEFT THERE BY THE OBJECTORS. WE REFER TO THE PETITIONS SIGNED BY REA, ESTEVES AND SACCOMANNO, ALL OF WHICH WERE POSTED AT ISLINGTON. SUB. NO. 1 ON FEBRUARY 26TH AND BEAR, RESPECTIVELY, THE FOLLOWING REGISTRATION NUMBERS, NAMELY, # 76, # 77, AND # 82. OTHER PETITIONS FILED WITH THE BOARD BEAR POST OFFICE REGISTRATION NUMBERS # 78, 79, 81, 83, 84 AND 85, ALL FOR ISLINGTON SUB. NO. 1 AND ALL DATED FEBRUARY 26, 1966. THERE IS NO EVIDENCE TO SUGGEST THAT MRS. FALCO WAS IN ATTENDANCE AT THE COMPANY OFFICE.

WHILE IT MAY WELL BE THAT FALCO ATTENDED AT THE OFFICE OF THE INTERVENER AND THERE SIGNED SOME DOCUMENT WHICH HE SUBSEQUENTLY GAVE TO HIS WIFE TO MAIL, HAVING REGARD TO THE ABOVE CONSIDERATIONS WE ARE UNABLE TO ACCEPT HIS TESTIMONY THAT THE PETITION, L 2, WAS SIGNED AT THE OFFICE OF LOCAL #1 OR THAT HE SAW JOHN MEORIN TYPE THE SAID DOCUMENT. WE ARE SATISFIED THAT HE SIGNED L 2 AT THE COMPANY OFFICE AND THERE IS NO DIRECT EVIDENCE BEFORE US AS TO THE ORIGINATION OF THAT DOCUMENT. THERE IS THUS NO DIRECT OR FIRST-HAND EVIDENCE BEFORE THE BOARD AS TO THE ORIGINATION OF ANY OF THE PETITIONS FILED IN OPPOSITION TO THE APPLICATION.

IT IS ARGUED HOWEVER THAT THE FAIR INFERENCE IS THAT LOCAL #1 PREPARED THE VARIOUS PETITIONS. THERE IS NO DISPUTE THAT THE DOCUMENTS ARE IDENTICAL IN FORM SAVE FOR THE NAMES AND ADDRESSES APPEARING THEREON AND THAT THEY ARE COPIES OF AN ORIGINAL. THE ARGUMENT IS BASED ON THE FACT THAT AT LEAST FOUR OF THE DOCUMENTS WERE SIGNED AT THE OFFICE OF LOCAL #1 AND THAT THOSE SIGNED AT THE COMPANY OFFICE, AND IN ONE INSTANCE ON THE STREET, APPEARED THERE THROUGH THE COMPANY FIELD FOREMAN, EMILIO MANARIN, ACTING AS A CONDUIT PIPE FOR LOCAL #1 OF WHICH HE WAS A MEMBER AND NOT IN HIS CAPACITY AS A FOREMAN. BEFORE CONSIDERING THIS ARGUMENT IT IS NECESSARY TO CONSIDER THE TIMES AT WHICH THE PETITIONS WERE SIGNED AND THE STATUS OF MANARIN AND OTHER FOREMEN.

THE EVIDENCE CLEARLY ESTABLISHED THAT OF THE ELEVEN PETITIONS IDENTIFIED AT THE HEARING, SOME WERE SIGNED AT THE COMPANY OFFICE, OTHERS AT THE LOCAL #1 OFFICE AND ONE ON THE STREET. THE APPLICATION FOR CERTIFICATION WAS RECEIVED BY THE BOARD ON THURSDAY, FEBRUARY 24, 1966 AND A COPY WAS FORWARDED BY REGISTERED MAIL TO THE RESPONDENT, LOCATED IN METROPOLITAN TORONTO, ON THE SAME DAY. ALL THE PETITIONS WERE MAILED TO THE BOARD ON SATURDAY, FEBRUARY 26, 1966. REA, ESTEVES AND SACCOMANNO WHO SIGNED THE PETITIONS AT THE COMPANY OFFICE ALL TESTIFIED THAT IT WAS ON A FRIDAY AFTER WORK. VECCHI CONFIRMS THIS. WE HAVE ALREADY FOUND THAT FALCO SIGNED AT THE SAME TIME AND PLACE AS REA. LONGHIN WHO ASKED MANARIN IF HE HAD A LETTER HE (LONGHIN) COULD SIGN SAID THAT THIS OCCURRED ON A SATURDAY MORNING. COLLETTI AND GUARRAGI WHO SIGNED THEIR PETITIONS AT THE LOCAL #1 OFFICE TESTIFIED IT WAS NOT A WORKING DAY. LOMMONACO TESTIFIED HE WENT IN THE MORNING FROM HIS HOME TO LOCAL #1 OFFICE TO SIGN THE PETITION AND THEN ON TO WORK. HOWEVER GUARRAGI'S EVIDENCE IS THAT BOTH COLLETTI AND LOMMONACO WERE PRESENT WHEN HE SIGNED HIS PETITION.

PANELLA WHO CLAIMS HE SIGNED AT THE LOCAL #1 OFFICE, ONE EVENING, COULD NOT IDENTIFY THE DAY OTHER THAN TO SAY IT WAS A WORKING DAY AND HE WENT FROM HIS HOME TO THE UNION OFFICE. HE FURTHER TESTIFIED THAT HE KNEW WHERE THE COMPANY OFFICE WAS, THAT THE LAST TIME HE WAS THERE WAS ABOUT A YEAR AGO (THAT IS THE SPRING OF 1965) AND THAT HE HAD NOT TALKED WITH HIS BOSSES ABOUT THE PETITIONS AND THEY HAD NOT TALKED TO HIM. THE EVIDENCE OF REA CORROBORATED BY VECCHI IS CLEARLY TO THE CONTRARY AND PANELLA WAS NOT CALLED IN REPLY. PANELLA'S EVIDENCE THAT HE WENT ON HIS OWN, WITHOUT ANY DIRECTION, BECAUSE HE DECIDED HE WANTED TO JOIN LOCAL #1, ALONG WITH THE TIME HE CLAIMS HE SIGNED THE DOCUMENT DOES NOT IN OUR VIEW FIT INTO THE GENERAL PATTERN OF EVENTS AS ESTABLISHED BY OTHER EVIDENCE AND IN ALL THE CIRCUMSTANCES OF THE CASE WE ACCEPT THE EVIDENCE OF REA THAT PANELLA ACCOMPANIED HIM TO THE COMPANY OFFICE ON THE FRIDAY EVENING AND SIGNED THE PETITION AT THAT LOCATION.

SIMILARLY WE ACCEPT THE EVIDENCE OF REA, AGAIN CORROBORATED BY VECCHI THAT PAOLINA SIGNED THE PETITION AT THE COMPANY OFFICE ON THE FRIDAY NIGHT AND NOT AS HE CLAIMED AT THE LOCAL #1 OFFICE ON THE SATURDAY. PAOLINA ADMITTED TO BEING AT THE COMPANY OFFICE THOUGH HE CLAIMS IT WAS SOME TWO WEEKS BEFORE HE SIGNED THE PETITION. HOWEVER HIS DESCRIPTION OF WHAT TRANSPIRED AT THE COMPANY OFFICE, WHO WAS PRESENT AND THE TIME HE WAS THERE, THAT IS, AT 6 O'CLOCK IN THE EVENING, LEAVES THE DEFINITE IMPRESSION THAT HE WAS DESCRIBING THE SAME MEETING AS REA. FURTHERMORE PAOLINA CANNOT READ ENGLISH AND SAYS THAT HE DID NOT UNDERSTAND THE PETITION, THAT NO ONE EXPLAINED IT TO HIM AND THAT HE WENT TO SIGN FOR LOCAL #1. HE MAKES NO REFERENCE TO THE APPLICANT UNION ALTHOUGH THE PETITION ITSELF DOES NOT MENTION LOCAL #1 BUT STATES SIMPLY THAT THE SIGNATORY DOES NOT WANT THE APPLICANT TO REPRESENT HIM. AS WE SAID ABOVE WE ACCEPT THE EVIDENCE OF REA IN PREFERENCE TO PAOLINA AS TO THE LOCALE AND DAY THE LATTER SIGNED THE PETITION. HOWEVER EVEN IF, FOR PRESENT PURPOSES, WE WERE TO ACCEPT PAOLINA'S EVIDENCE, IT IS TO THE EFFECT THAT THE DOCUMENT WAS SIGNED AT THE LOCAL #1 OFFICE ON A SATURDAY.

A CONSIDERATION OF THE ABOVE EVIDENCE AND FINDINGS LEADS US THUS TO THE FOLLOWING CONCLUSIONS:

- 1) THAT REA, ESTEVES, SACCOMANNO, FALCO, PANELLA AND PAOLINI SIGNED THEIR PETITIONS ON FRIDAY, FEBRUARY 25, AT THE COMPANY OFFICE;

- 2) THAT COLLETTI, GUARRAGI AND LOMMONACO SIGNED THEIR PETITIONS ON SATURDAY, FEBRUARY 26TH AT THE LOCAL #1 OFFICE; AND
- 3) THAT LONGHIN SIGNED HIS PETITION ON THE STREET ON SATURDAY, FEBRUARY 26TH, IN THE PRESENCE OF EMILIO MANARIN WHO HAD A PETITION WITH HIM WHICH HE PRODUCED FOR SIGNATURE AT LONGHIN'S REQUEST.

THERE REMAINS FOR CONSIDERATION THE PETITION SIGNED BY BENINCASA. HIS EVIDENCE IS THAT HE LEFT WORK EARLY ON FRIDAY, FEBRUARY 25, AND WENT TO THE UNION OFFICE WHERE HE SIGNED THE PETITION. ASSUMING HE IS CORRECT AS TO THE DAY OF SIGNING (AND HE IS THE ONLY OBJECTOR WHO COULD REMEMBER THE DATE), THIS WAS THE ONLY PETITION SIGNED AT THE UNION OFFICE ON FRIDAY, FEBRUARY 25.

THERE ARE CERTAIN OTHER MATTERS WHICH MUST BE MENTIONED AT THIS TIME. THE FOLLOWING FACTS ARE ESTABLISHED TO OUR SATISFACTION BY THE UNCONTRADICTED TESTIMONY (AT LEAST ON THE MATTERS WHICH FOLLOW) OF ONE OR MORE OF THE FOLLOWING WITNESSES, NAMELY, SACCOMANNO, ESTEVES, REA AND TO SOME EXTENT PAOLINA:

1. SILVIO VACHER, A FOREMAN, BROUGHT 5 OR 6 LABOURERS TO THE COMPANY OFFICE IN A COMPANY TRUCK ON FRIDAY, FEBRUARY 25 AFTER THEY HAD FINISHED WORK. THE EMPLOYEES DID NOT KNOW WHY THEY WERE GOING, SILVIO MERELY SAYING TO THEM "WE ARE GOING TO THE OFFICE".
2. G. TANEL, A FOREMAN, TOLD OTHER LABOURERS ON FRIDAY, FEBRUARY 25, AFTER WORK, THAT THEY WERE TO GO TO THE COMPANY OFFICE. AS A RESULT THE LABOURERS IN QUESTION WENT TO THE COMPANY OFFICE ALTHOUGH TANEL DID NOT TELL THEM WHY THEY WERE TO GO.
3. IN ALL SOME 15 OR 16 LABOURERS ATTENDED AT THE COMPANY OFFICE AT THAT TIME.
4. EMILIO MANARIN, THE FIELD FOREMAN, AND TIBERIO MASCARIN, A PARTNER IN THE BUSINESS, WERE PRESENT AT THE OFFICE. MANARIN HAD THE PETITIONS AND INVITED THE LABOURERS TO SIGN THEM AND ALL BUT 3 OR 4 SIGNED. MANARIN WAS "ASKING OR SORT OF FORCING THOSE WHO DIDN'T SIGN TO SIGN".

THIS BRINGS US TO THE QUESTION OF THE STATUS OF MANARIN, VACHER AND TANEL. DEALING FIRST WITH MANARIN, WE HAVE NO HESITATION IN FINDING THAT HE IS THE KIND OF PERSON WHOM THE BOARD INTENDS TO EXCLUDE FROM A CRAFT BARGAINING UNIT BY THE TERM "NON-WORKING FOREMAN". HE IS THE FIELD FOREMAN OF THE RESPONDENT, RESPONSIBLE TO T. MASCARIN, THE PRESIDENT AND GENERAL MANAGER, AND AS SUCH IS CLEARLY IN CHARGE OF THE DAY TO DAY SITE OPERATIONS OF THE RESPONDENT. ONLY 5 PER CENT OF HIS TIME IS SPENT WORKING MANUALLY. WHEN HE ASSUMED THE POSITION OF FIELD FOREMAN HE WAS TOLD THAT HIS DUTIES AND RESPONSIBILITIES WOULD BE:

- (1) TO LOOK AFTER AND INSPECT THE VARIOUS JOBS THAT THE OTHER FOREMEN WERE WORKING ON;

- (2) TO ENSURE THAT EVERYTHING ON THESE JOBS WENT WELL I.E. PREPARATION AS WELL AS THE START, WORK IN PROGRESS AND THE FINISH;
- (3) TO CHANGE MEN FROM JOB SITE TO JOB SITE AS NECESSARY SO THAT THERE WOULD BE MORE OR LESS MEN ON EACH JOB PER DAY AS REQUIRED;
- (4) GENERALLY, TO TAKE CARE OF EVERYTHING SUCH AS THAT EVERY MAN WAS DOING HIS DUTY, AND,
- (5) IF HE HAD TO FIRE ANYONE TO DO SO.

THE EVIDENCE BEFORE US ESTABLISHES THAT HE IN FACT EXERCISES THESE DUTIES AND RESPONSIBILITIES.

IN ADDITION WHEN IT IS NECESSARY HE HIRES, FIRES OR LAYS OFF WITHOUT CONSULTING MASCARIN. THUS, FOR EXAMPLE, MANARIN STATED IN EVIDENCE THAT THE SITE FOREMAN CANNOT LAY OFF ANY MEN WITHOUT FIRST ASKING HIM ABOUT IT. HIS RECOMMENDATIONS ON PAY INCREASES ARE "MOSTLY" ACCEPTED. IN FACT THE EVIDENCE SUGGESTS THAT HE GIVES INCREASES TO MEN WHO DESERVE IT BUT HE MAY OCCASIONALLY BE OVERRULED BY MASCARIN. HE FREQUENTLY ALLOWS MEN TIME OFF FOR A DAY OR SO. EMPLOYEES WITH GRIEVANCES OR COMPLAINTS APPROACH HIM DIRECTLY AND MOST OF THE TIME HE ALONE WOULD MAKE THE DECISION AS TO HOW THE SITUATION WOULD BE HANDLED. HE WOULD CONSULT MASCARIN IF AVAILABLE BUT HE IS USUALLY NOT AVAILABLE DURING THE DAY. WHILE HE HAS NOTHING TO DO WITH THE PURCHASE OF EQUIPMENT HE IS CONCERNED DAILY WITH SEEING THAT REPAIRS ARE MADE TO EQUIPMENT. CLEARLY HE MAKES THE DECISION AS TO WHAT REPAIRS ARE NECESSARY AND HOW THIS SHOULD BE ACCOMPLISHED EVEN THOUGH FROM AN ADMINISTRATIVE POINT OF VIEW HE WOULD GET A PURCHASE ORDER NUMBER FROM THE OFFICE. WHILE MANARIN IS A MEMBER OF LOCAL #1 HE DOES NOT BELIEVE THAT HE IS INCLUDED IN THE BRICKLAYERS' BARGAINING UNIT IN THE COLLECTIVE AGREEMENT WHICH LOCAL #1 HAS WITH THE RESPONDENT. WE WOULD BE SURPRISED IF HE WAS.

HAVING REGARD TO THE ABOVE CONSIDERATIONS WE ARE UNABLE TO AGREE THAT MANARIN IS A MERE CONDUIT PIPE FOR THE OWNER MASCARIN. WHILE HIS POWERS, DUTIES AND RESPONSIBILITIES DO NOT EXACTLY COINCIDE WITH THOSE OF THE EMPLOYEE WHOSE STATUS WAS IN QUESTION IN THE PRE CON MURRAY LIMITED CASE, O.L.R.B. MONTHLY REPORT, AUGUST, 1965, P. 328, A CASE RELIED ON STRONGLY BY THE RESPONDENT, THEY ARE NOT DISSIMILAR. FURTHERMORE IN SOME RESPECTS MANARIN HAS FAR GREATER RESPONSIBILITIES BECAUSE UNLIKE THE EMPLOYEE IN THAT CASE WHO WAS CONCERNED WITH ONLY ONE JOB SITE, MANARIN IS RESPONSIBLE FOR ALL THE OPERATIONAL SITES OF THE RESPONDENT. IN SHORT, THEN, WE FIND THAT MANARIN EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. IN ADDITION WE HAVE NO DOUBT THAT WHEN THE NATURE OF HIS DAILY WORK TASKS ALONG WITH HIS POWERS ARE CONCERNED THE EMPLOYEES AND INDEED THE OTHER FOREMEN WOULD REGARD HIM AS A PART OF THE MANAGEMENT.

VACHER AND TANEL UNDOUBTEDLY DO NOT HAVE THE SAME POWERS AND RESPONSIBILITIES AS MANARIN. IT IS ARGUED STRENUOUSLY THAT THEY ARE WORKING FOREMEN AND AS SUCH WOULD NORMALLY BE INCLUDED IN A CRAFT BARGAINING UNIT. AS IN THE CASE

OF MANARIN, THERE IS NO QUESTION OF VACHER OR TANEL BEING INCLUDED IN THE BARGAINING UNIT WITH WHICH WE ARE CONCERNED, NAMELY CONSTRUCTION LABOURERS, BECAUSE OF COURSE EACH IS OR WAS A BRICKLAYER. FURTHER FOR PRESENT PURPOSES WE DO NOT FIND IT NECESSARY TO DETERMINE WHETHER THESE TWO EMPLOYEES EXERCISE MANAGERIAL FUNCTIONS. WHATEVER THEIR DUTIES MIGHT BE IT IS CLEAR THAT THEY ARE FROM TIME TO TIME FOREMEN IN CHARGE OF THE BRICKLAYERS AND LABOURERS ON A PARTICULAR PROJECT. IT IS ALSO CLEAR THAT THEY SUPERVISE THE LABOURERS IN THE PERFORMANCE OF THEIR WORK AND GIVE THEM ORDERS. WE ARE SATISFIED THAT WHEN TANEL AND VACHER TOLD THE MEN TO REPORT TO THE COMPANY OFFICE ON FRIDAY, FEBRUARY 25, THE MEN WOULD REGARD THIS AS AN ORDER, GIVEN BY A "BOSS", WHICH THEY WERE BOUND TO AND DID IN FACT OBEY WITHOUT QUESTION.

WE COME BACK NOW TO THE ARGUMENT PUT FORWARD THAT IT IS A FAIR INFERENCE FROM THE EVIDENCE THAT LOCAL #1 WAS THE ORIGINATOR OF THE PETITIONS. THERE IS NOTHING IN THE WORDING OF THE PETITIONS WHICH COULD LEAD TO SUCH AN INFERENCE. LOCAL #1 IS NOT MENTIONED. FURTHERMORE AS WE HAVE FOUND ABOVE, APART FROM THE CASE OF BENINCASA, THE PETITIONS FIRST MAKE THEIR APPEARANCE BEFORE AT LEAST HALF OF THE RESPONDENT'S LABOURERS AT THE COMPANY OFFICE ON FRIDAY, FEBRUARY 25. THEY ARE PRODUCED BY MANARIN WHOM WE HAVE FOUND TO BE A MEMBER OF MANAGEMENT. THE PRESIDENT AND GENERAL MANAGER OF THE COMPANY, THE "PADRONE", IS ALSO PRESENT. THE EMPLOYEES IN QUESTION ARE ORDERED TO ATTEND THE COMPANY OFFICE AFTER WORKING HOURS BY THEIR ON SITE BOSSES AND THERE IS NO QUESTION OF THEIR DISOBEYING THE ORDER. THE PETITION NEXT APPEARS IN THE HANDS OF MANARIN ON SATURDAY MORNING AND LONGHIN MUST HAVE KNOWN BEFOREHAND THAT MANARIN HAD THE PETITION BECAUSE HE ASKED MANARIN "IF HE HAD A LETTER". IN THESE CIRCUMSTANCES IF ANY INFERENCE IS TO BE DRAWN IT MUST SURELY BE THAT THE RESPONDENT THROUGH MEMBERS OF MANAGEMENT ORIGINATED THE PETITIONS. THERE IS NOTHING IN THE EVIDENCE TO SUPPORT AN INFERENCE THAT MANARIN, VACHER OR TANEL WERE ACTING IN THEIR CAPACITIES AS MEMBERS OF LOCAL #1. AT THE VERY LEAST THE APPEARANCE OF THE PETITIONS AT THE COMPANY OFFICE IN THE CIRCUMSTANCES DESCRIBED REQUIRES AN EXPLANATION BUT NO EVIDENCE WAS CALLED BY THE RESPONDENT OR THE OBJECTORS IN REPLY. WE ARE THEREFORE UNABLE TO AGREE THAT THE EVIDENCE JUSTIFIES AN INFERENCE THAT LOCAL #1 WAS THE ORIGINATOR OF THE PETITIONS.

THAT BEING THE CASE IT FOLLOWS FROM OUR EARLIER FINDINGS THAT THE ORIGINATION OF THE PETITIONS HAS NOT BEEN ESTABLISHED AND IN THESE CIRCUMSTANCES WE ARE NOT PREPARED TO FIND THAT THE PETITIONS CAST DOUBT ON THE MEMBERSHIP EVIDENCE OF THE APPLICANT. HOWEVER THERE ARE OTHER GROUNDS ON WHICH THE SAME FINDING COULD BE MADE, ASIDE FROM THE QUESTION OF ORIGINATION, AND WE INTEND NOW TO DEAL BRIEFLY WITH THESE OTHER GROUNDS.

IN THE FIRST PLACE, BEFORE A PETITION CAN BE HELD TO CAST DOUBT ON EVIDENCE OF MEMBERSHIP THE SIGNATORY MUST KNOW THE PURPOSE OF THE PETITION WHICH HE SIGNS. SEE EVER-BRIGHT LIMITED, (1956) 30R CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER, 155-159, ¶16,053, C.L.S. 76-528. IN THE PRESENT CASE NONE OF THE OBJECTORS COULD READ ENGLISH AND THE PETITIONS WERE IN THAT LANGUAGE. COLLETTI TESTIFIED THAT HE CAME TO THE UNION OFFICE TO SIGN FOR LOCAL #1, THAT HE WAS NOT TOLD WHAT WAS IN THE PETITION AND THAT HE UNDERSTOOD THE PURPOSE OF THE DOCUMENT WAS TO BE IN GOOD STANDING WITH LOCAL #1. GUARRAGI'S EVIDENCE IS TO THE SAME EFFECT EXCEPT THAT HE UNDERSTOOD THE DOCUMENT TO MEAN "BENEFITS IN WORKING". LOMMONACO ALSO CAME TO SIGN FOR LOCAL #1. HE UNDERSTOOD THE LETTER TO SAY THAT "IT WAS TO FORM A UNION FOR THE LABOURERS SO WE WOULD HAVE RIGHTS

LIKE THE BRICKLAYERS". LOCAL #506 (THE APPLICANT) WAS NOT DISCUSSED. ESTEVES EVIDENCE IS THAT MANARIN JUST SAID IT WAS FOR UNION #1. THERE WAS NO DISCUSSION ABOUT LOCAL #506. PAOLINA STATES THAT HE WENT TO SIGN FOR UNION #1, THAT HE DID NOT UNDERSTAND THE LETTER AND NO ONE EXPLAINED IT TO HIM. REA'S EVIDENCE IS THAT THE PETITION WAS NOT EXPLAINED TO HIM, HE DID NOT UNDERSTAND IT, THE OTHER LABOURERS SAID IT WAS FOR UNION #1 AND HE SIGNED BECAUSE THEY DID.

THUS THE EVIDENCE ESTABLISHES IN OUR VIEW THAT THE ABOVE 6 OBJECTORS DID NOT REALIZE THEY WERE SIGNING A DOCUMENT RENOUNCING MEMBERSHIP IN LOCAL #506; RATHER ALL BELIEVED (TO PUT THE EVIDENCE IN ITS MOST FAVOURABLE LIGHT) THAT THEY WERE SIGNING INTO LOCAL #1. IT IS NOT UNCOMMON FOR AN EMPLOYEE TO JOIN MORE THAN ONE UNION DURING COMPETING ORGANIZATIONAL DRIVES BUT THE MERE FACT OF JOINING A SECOND UNION DOES NOT CARRY THE INFERENCE THAT HE THEREBY DOES NOT WANT THE FIRST UNION. IN THESE CIRCUMSTANCES WE ARE NOT PREPARED TO FIND THAT THE PETITIONS SIGNED BY THESE 6 OBJECTORS WEAKEN ANY EVIDENCE OF MEMBERSHIP WHICH MAY HAVE BEEN FILED FOR THEM BY THE APPLICANT.

SECONDLY, THERE ARE MANY BOARD DECISIONS DEALING WITH THE EFFECT OF MANAGEMENT PARTICIPATION DIRECTLY OR INDIRECTLY IN THE ORIGINATION AND, OR, CIRCULATION OF EMPLOYEES' STATEMENTS OF DESIRE AND A SUBSTANTIAL NUMBER OF THESE WERE REFERRED TO IN SOME DETAIL IN ARGUMENT. IT IS SUFFICIENT FOR PRESENT PURPOSES TO REFER TO ONE ONLY, NAMELY, PIGOTT MOTORS (1961) LIMITED, 63 C.L.L.C. 1125, C.L.S. 76-903, WHERE THE BOARD SAID:

THE LABOUR RELATIONS ACT CONTAINS DETAILED PROVISIONS DESIGNED TO PROTECT THE RIGHTS OF EMPLOYEES TO BECOME MEMBERS OF, AND TO SELECT OR REJECT A PARTICULAR OR ANY TRADE UNION AS THEIR COLLECTIVE BARGAINING AGENT AND TO BARGAIN COLLECTIVELY OR INDIVIDUALLY WITH THEIR EMPLOYER. IT IS AN IMPORTANT FUNCTION AND DUTY OF THIS BOARD UNDER THE LEGISLATION TO BE CIRCUMSPECT AND VIGILANT TO SEE THAT THESE RIGHTS ARE PRESERVED AND NOT MADE ILLUSORY.

THERE ARE CERTAIN FACTS OF LABOUR-MANAGEMENT RELATIONS WHICH THIS BOARD HAS, AS A RESULT OF ITS EXPERIENCE IN SUCH MATTERS, BEEN COMPELLED TO TAKE COGNIZANCE. ONE OF THESE FACTS IS THAT THERE ARE STILL SOME EMPLOYERS WHO, THROUGH IGNORANCE OR DESIGN, SO CONDUCT THEMSELVES AS TO DENY, ABRIDGE OR INTERFERE IN THE RIGHTS OF THEIR EMPLOYEES TO JOIN TRADE UNIONS OF THEIR OWN CHOICE AND TO BARGAIN COLLECTIVELY WITH THEIR EMPLOYER. IN VIEW OF THE RESPONSIVE NATURE OF HIS RELATIONSHIP WITH HIS EMPLOYER, AND OF HIS NATURAL DESIRE TO WANT TO APPEAR TO IDENTIFY HIMSELF WITH THE INTERESTS AND WISHES OF HIS EMPLOYER, AN EMPLOYEE IS OBVIOUSLY PECULIARLY VULNERABLE TO INFLUENCES, OBVIOUS OR DEVIOUS, WHICH MAY OPERATE TO IMPAIR OR DESTROY THE FREE EXERCISE OF HIS RIGHTS UNDER THE ACT.

KEEPING THESE PRINCIPLES IN MIND WE HAVE NO HESITATION IN FINDING THAT THE PETITIONS SIGNED AT THE COMPANY OFFICE ON FRIDAY, FEBRUARY 25, IN THE CIRCUMSTANCES DESCRIBED ABOVE, DO NOT WEAKEN ANY EVIDENCE OF MEMBERSHIP IN THE APPLICANT THAT MAY HAVE BEEN FILED FOR OBJECTORS SIGNING AT SUCH LOCALE. THE FACT THAT 3 OR 4 DID NOT SIGN AND APPARENTLY SUFFERED NO PENALTY DOES NOT, IN OUR VIEW, JUSTIFY AN INFERENCE THAT THOSE WHO DID SIGN WERE NOT ADVERSELY AFFECTED BY THE DIRECT PARTICIPATION OF MANAGEMENT. WE HAVE COME TO THE SAME CONCLUSION WITH RESPECT TO THE OBJECTOR WHO WENT UP TO MANARIN AND ASKED HIM IF HE HAD A LETTER. THE PETITIONS THUS AFFECTED BY THIS CONCLUSION ARE THOSE SUBMITTED FOR FALCO, LONGHIN, PANELLA, SACCOMANNO, ESTEVES, PAOLINA AND REA. IN ADDITION WE WOULD NOT GIVE WEIGHT TO LOMMONACO'S PETITION BECAUSE WHILE THE EVIDENCE IS THAT HE SIGNED THE PETITION AT THE UNION OFFICE ON SATURDAY, HE WAS, ACCORDING TO REA WHOSE EVIDENCE WE HAVE ACCEPTED, AT THE COMPANY OFFICE ON THE FRIDAY NIGHT ALTHOUGH REA DID NOT SEE HIM SIGN AT THAT TIME. THE INFLUENCE EXERTED ON THE FRIDAY NIGHT WOULD NOT HAVE BEEN DISSIPATED BY SATURDAY.

THUS 10 OF THE 11 PETITIONS, BEFORE US, FAIL ON THE ADDITIONAL GROUNDS OF EITHER FAILURE TO PROVE INTENT OR EMPLOYER INFLUENCE OR BOTH. THE ELEVENTH, THAT OF BENINCASA FAILS OF COURSE BECAUSE OF LACK OF PROOF OF ORIGATION. THERE IS NO DIRECT EVIDENCE OF EMPLOYER INFLUENCE IN HIS CASE. HOWEVER, THERE IS CONSIDERABLE DOUBT IN OUR MINDS AS TO WHAT HIS PURPOSE WAS IN SIGNING THE PETITION. THUS HE TESTIFIES THAT THE PETITION DID NOT SAY ANYTHING ABOUT LOCAL #506 ALTHOUGH HE LATER SAYS THAT HE UNDERSTOOD THE PURPOSE OF THE LETTER TO BE "IF WE WANTED LOCAL #1 WE WOULD SIGN AND IF WE WANTED THE OTHER WE WOULDN'T".

THE BOARD HAS GIVEN CAREFUL CONSIDERATION TO ALL THE EVIDENCE PRESENTED AND ARGUMENTS MADE IN THIS CASE ON THE ISSUES PRESENTLY BEFORE US, ALTHOUGH NOT ALL THE EVIDENCE OR ARGUMENTS HAVE BEEN SPECIFICALLY REFERRED TO IN THESE REASONS. IN THE LIGHT OF OUR DELIBERATIONS AND FINDINGS WE ARE SATISFIED THAT THE PETITIONS DO NOT SO WEAKEN THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT AS TO REQUIRE THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE. FURTHERMORE, IN VIEW OF THE FACTS IN THIS CASE WE FIND NO MERIT IN THE ARGUMENT ADVANCED BY COUNSEL FOR THE OBJECTORS THAT WE SHOULD EXERCISE OUR DISCRETION AND ORDER A VOTE UNDER SECTION 7(2) OF THE LABOUR RELATIONS ACT. IN VIEW OF THE ABOVE CONCLUSIONS IT IS NOT NECESSARY FOR THE BOARD TO DEAL WITH THE MOTION OF THE APPLICANT UNDER SECTION 7(5) OF THE ACT.

NO ARGUMENT WAS ADDRESSED TO THE BOARD WITH RESPECT TO THE MEMBERSHIP EVIDENCE IN THE APPLICANT FILED FOR LOMMONACO. CLEARLY ON THE EVIDENCE THERE WAS NO MISREPRESENTATION ON THE PART OF THE ORGANIZER AND IF LOMMONACO'S CARD WERE NOT COUNTED THE POSITION OF THE APPLICANT WOULD NOT BE AFFECTED.

THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE RESPONDENT IN ITS REPLY SUBMITTED THAT THE APPLICANT IS NOT "AN APPROPRIATE LABOUR UNION TO BE CERTIFIED IN THE CIRCUMSTANCES OF THE SUBURBAN BUILDING INDUSTRY". COUNSEL FOR THE RESPONDENT HAS INFORMED THE BOARD THAT HE

INTENDS TO ADDUCE EVIDENCE IN CONNECTION WITH THIS ISSUE. COUNSEL FOR THE APPLICANT INTENDS TO OBJECT TO THE INTRODUCTION OF SUCH EVIDENCE. THE APPLICANT WILL HAVE ONE WEEK FROM THE DATE OF THE DECISION TO FILE WRITTEN ARGUMENT IN CONNECTION WITH ITS OBJECTION AND THE OTHER PARTIES WILL HAVE ONE WEEK FROM RECEIPT OF THE APPLICANT'S ARGUMENT IN WHICH TO FILE THEIR REPLIES WITH THE BOARD. THE APPLICANT WILL FILE ANY FURTHER REPRESENTATIONS WITHIN 5 DAYS OF RECEIPT OF THE OTHER PARTIES' REPLIES.

11497-65-R: BRICKLAYERS' & TILESETTERS' LOCAL UNION No. 2, ONTARIO AFFILIATED WITH THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (APPLICANT) v. 20TH CENTURY MASONRY COMPANY (RESPONDENT) v. BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA LOCAL 1 (INTERVENER).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE, J. DILLON, JOHN ZANUSSI, D. WILLIAMS AND J. CAMPANER FOR THE APPLICANT; W. FRAM FOR THE RESPONDENT AND LLOYD D. CADSBY FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (JULY 8, 1966).

. . .

2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

3. THE APPLICANT APPLIED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT TO BE CERTIFIED AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT CONSISTING OF "ALL JOURNEYMEN BRICKLAYERS AND THEIR APPRENTICES AND BRICKLAYERS BELOW THE RANK OF NON-WORKING FOREMAN" IN BOARD AREA #8. A QUESTION HAVING ARISEN AS TO THE COMPOSITION OF THE BARGAINING UNIT, AN EXAMINER WAS APPOINTED TO INQUIRE INTO AND TO REPORT BACK TO THE BOARD "ON THE COMPOSITION OF THE BARGAINING UNIT AND ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT". THE EXAMINER'S REPORT, DATED MAY 26, 1966, WAS RELEASED TO THE PARTIES, EACH OF WHICH IN DUE COURSE FILED OBJECTIONS TO THE REPORT AND INDICATED THAT THEY WISHED TO MAKE REPRESENTATIONS TO THE BOARD IN CONNECTION WITH THE REPORT. THE OBJECTIONS TO THE REPORT WERE CLEARED UP TO THE SATISFACTION OF THE PARTIES IN A SUPPLEMENTARY REPORT ISSUED BY THE EXAMINER AND DATED JUNE 3, 1966.

ALTHOUGH THIS CASE RAISES MANY ISSUES, THE BOARD FELT THAT IT WAS DESIRABLE TO SETTLE THE COMPOSITION OF THE BARGAINING UNIT BEFORE DEALING WITH ANY OF THE OTHER ISSUES IN THE CASE AND CONSEQUENTLY THE MATTER WAS LISTED FOR HEARING FOR THE PURPOSE OF HEARING OBJECTIONS AND REPRESENTATIONS WITH RESPECT TO THE TWO REPORTS OF THE EXAMINER. THE BOARD HAS NOW HAD AN OPPORTUNITY TO CONSIDER THE REPRESENTATIONS OF THE PARTIES MADE AT THE HEARING AND IS THEREFORE IN A POSITION TO DEAL WITH THE COMPOSITION OF THE BARGAINING UNIT.

4. THE BOARD FURTHER FINDS THAT ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE

NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE APPLICANT HAVING ABANDONED ITS CONTENTIONS WITH RESPECT TO ROMANO FABRIS AT THE SAID HEARING, ONLY TWO PERSONS, NAMELY GIOVANNI GIACONA AND ANTONIO SERPA REMAIN IN DISPUTE. IT IS CLEAR FROM THE EVIDENCE THAT GIACONA IS NOT AN APPRENTICE AND, INDEED, THE RESPONDENT MAKES NO SUCH CLAIM. THE APPLICANT ARGUES THAT, ON HIS OWN ADMISSION, GIACONA IS NOT A QUALIFIED BRICKLAYER. THE APPLICANT FURTHER SUBMITS THAT GIACONA IS NOT A QUALIFIED "JOURNEYMAN" BRICKLAYER. WHILE IT IS TRUE THAT HE CANNOT READ BLUEPRINTS AND, FURTHER, CANNOT DO THE AMOUNT OF WORK DONE BY OTHERS, IT IS CLEAR THAT HE DOES ALL THE OTHER WORK THAT "FULLY QUALIFIED" BRICKLAYERS DO, THAT HE IN FACT WORKS AS A BRICKLAYER ON THE JOB WITH WHICH WE ARE CONCERNED AND THAT HE HAS WORKED AS A BRICKLAYER FOR A TOTAL OF SIX YEARS, BOTH IN CANADA AND ITALY. FOR TWO OF THE SIX YEARS HE WAS ENGAGED IN LEARNING THE TRADE IN ITALY.

THERE IS NO QUESTION THAT THE BOARD HAS LONG REGARDED SUCH PERSONS AS FALLING WITHIN A BRICKLAYERS' CRAFT BARGAINING UNIT. THE APPLICANT ARGUES THAT WHILE HE MAY BE A BRICKLAYER, HE IS NOT A JOURNEYMAN BRICKLAYER. HOWEVER, AS WAS POINTED OUT BY THE BOARD AT THE HEARING, IT HAS NOT BEEN THE PRACTICE OF THIS DIVISION SINCE THE INCEPTION OF THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT TO DESCRIBE A BRICKLAYERS' BARGAINING UNIT IN TERMS OF JOURNEYMAN BRICKLAYERS. THE DESCRIPTION USED BY THE BOARD IS "ALL BRICKLAYERS AND THEIR APPRENTICES".

THE APPLICANT SUBMITS, HOWEVER, THAT HAVING REGARD TO THE PROVISIONS OF THE APPRENTICESHIP AND TRADESMEN'S QUALIFICATION ACT, STATUTES OF ONTARIO, 1964, c. 3 AND TO THE REGULATIONS MADE THEREUNDER, AND IN PARTICULAR O. REG. 279/64 AND O. REG. 264/64, GIACONA IS NOT ENTITLED TO WORK AS A BRICKLAYER, SINCE HE DOES NOT HOLD A CERTIFICATE OF APPRENTICESHIP UNDER THE SAID ACT OR A CERTIFICATE OF QUALIFICATION IN THE TRADE OF BRICKLAYING. EVEN ASSUMING FOR PRESENT PURPOSES THAT THE ACT AND REGULATIONS SO PROVIDED, THAT WOULD NOT NECESSARILY MEAN, IN OUR VIEW, THAT FOR PURPOSES OF THE ONTARIO LABOUR RELATIONS ACT GIACONA WOULD NOT BE ELIGIBLE FOR INCLUSION IN A BRICKLAYERS' BARGAINING UNIT. HOWEVER, WE DO NOT AGREE THAT THE ACT AND REGULATIONS IN FACT GO THIS FAR. IT IS CLEAR THAT THE TRADE OF BRICKLAYING IS NOT A CERTIFIED TRADE WITHIN THE MEANING OF SECTION 10 OF THE APPRENTICESHIP AND TRADESMEN'S QUALIFICATION ACT, 1964 BECAUSE THE LIEUTENANT GOVERNOR IN COUNCIL HAS NOT DESIGNATED IT AS SUCH A TRADE. O. REG. 264/64 WHICH PROVIDES FOR AN APPRENTICE TRAINING PROGRAM IN THE BRICKLAYING TRADE DOES NOT DESIGNATE THAT TRADE AS A CERTIFIED TRADE. THIS IS IN CONTRAST TO THE TRADE OF MOTOR VEHICLE REPAIRER WHICH BY VIRTUE OF SECTION 4 OF O. REG. 274/64 IS SO DESIGNATED. AGAIN, O. REG. 279/64 DOES NOT CONTAIN ANYTHING IN IT WHICH SUGGESTS THAT THE BRICKLAYING TRADE IS A CERTIFIED TRADE WITHIN THE MEANING OF THE SAID SECTION 10. ALL THAT SECTION 1 OF THIS LAST-MENTIONED REGULATION DOES IS TO PROVIDE THAT IT APPLIES TO ANY TRADE FOR WHICH AN APPRENTICE TRAINING PROGRAM IS ESTABLISHED. THE FACT, HOWEVER, THAT AN APPRENTICE TRAINING PROGRAM MAY BE ESTABLISHED FOR A PARTICULAR TRADE DOES NOT MEAN THAT THAT TRADE IS AUTOMATICALLY A CERTIFIED TRADE WITHIN THE MEANING OF SECTION 10 OF THE ACT. THERE MUST, IN OUR VIEW, BE A SPECIFIC DESIGNATION

BY THE LIEUTENANT GOVERNOR IN COUNCIL OF A TRADE AS A CERTIFIED TRADE BEFORE THERE IS COMPLIANCE WITH SECTION 10 OF THE ACT. NO SUCH SPECIFIC DESIGNATION HAS BEEN BROUGHT TO OUR ATTENTION AND WE HAVE NOT BEEN ABLE TO DISCOVER ANY SUCH DESIGNATION.

IN VIEW OF THIS FINDING THE APPLICANT'S ARGUMENT BASED ON SECTION 10(2) OF THE SAID APPRENTICESHIP AND TRADESMEN'S QUALIFICATION ACT, 1964, WHICH PROVIDES:

"NO PERSONS, OTHER THAN AN APPRENTICE OR A PERSON REFERRED TO IN SUBSECTION 3 OF SUCH CLASS OF PERSONS AS IS EXEMPT FROM THIS SECTION, SHALL WORK OR BE EMPLOYED IN ANY CERTIFIED TRADE UNLESS SUCH PERSON HOLDS A SUBSISTING CERTIFICATE OF QUALIFICATION IN THE CERTIFIED TRADE."

IS WITHOUT MERIT.

WE ARE LEFT, THEREFORE, WITH SECTION 8 OF THE SAID ACT WHICH PROVIDES:

SEC. 8.-(1) EVERY PERSON WHO HEREAFTER COMMENCES TO WORK AT A TRADE FOR WHICH AN APPRENTICE TRAINING PROGRAMME IS ESTABLISHED BUT WHO DOES NOT HOLD A CERTIFICATE OF APPRENTICESHIP OR QUALIFICATION IN THAT TRADE SHALL,

- (A) FORTHWITH APPLY IN THE PRESCRIBED FORM FOR APPRENTICESHIP IN THAT TRADE; AND
- (B) WITHIN THREE MONTHS AFTER COMMENCING TO WORK IN THAT TRADE, FILE WITH THE DIRECTOR HIS CONTRACT OF APPRENTICESHIP.

IT MAY BE ARGUED THAT IN ONE SENSE GIACONA COMMENCED TO WORK AT A TRADE, NAMELY BRICKLAYING, FOR WHICH AN APPRENTICE TRAINING PROGRAM WAS ESTABLISHED AFTER THE COMING INTO FORCE IN OCTOBER, 1964, OF THE SAID SECTION, SINCE HE DID NOT COME TO CANADA UNTIL SEPTEMBER, 1965. THIS COULD ONLY BE THE CASE, HOWEVER, IF THE WORDS "COMMENCES TO WORK AT A TRADE" MEAN IN ONTARIO. CLEARLY ON THE EVIDENCE GIACONA COMMENCED TO WORK AT THE TRADE BEFORE THE SAID SECTION 8 CAME INTO EFFECT. HOWEVER, EVEN IF WE WERE TO ASSUME THAT SECTION 8 IS MEANT TO APPLY TO A PERSON SUCH AS GIACONA, IT IS CONDITIONED BY THE WORDS "WHO DOES NOT HOLD A CERTIFICATE OF APPRENTICESHIP OR QUALIFICATION IN THAT TRADE....." ADMITTEDLY GIACONA DOES NOT HOLD A CERTIFICATE OF APPRENTICESHIP WITHIN THE MEANING OF SECTION 8 AND DOES NOT HOLD A CERTIFICATE OF QUALIFICATION. ON THE OTHER HAND, IT IS EQUALLY CLEAR THAT THERE IS NO PROVISION IN THE ACT OR THE REGULATIONS PRESCRIBING WHAT KIND OF CERTIFICATE OF QUALIFICATION HE MUST HOLD. THE FORMS PROVIDING FOR QUALIFICATION CERTIFICATES DEAL ONLY WITH CERTIFICATES OF QUALIFICATIONS IN A CERTIFIED TRADE. THERE IS NO PROVISION FOR A CERTIFICATE OF QUALIFICATION FOR PERSONS ENGAGED IN A TRADE WHICH HAS NOT BEEN DESIGNATED AS A CERTIFIED TRADE UNDER THE APPRENTICESHIP AND TRADESMEN'S QUALIFICATION ACT, 1964. THAT BEING THE CASE, IT IS DIFFICULT TO SEE HOW IT CAN BE ARGUED THAT GIACONA IS PROHIBITED FROM CARRYING ON THE TRADE OF A BRICKLAYER.

IT SHOULD BE POINTED OUT THAT THERE IS NO PROVISION IN THE SAID ACT FOR UNCERTIFIED TRADES COMPARABLE TO SECTION 10(2) (QUOTED ABOVE) OF THE ACT DEALING WITH CERTIFIED TRADES.

HAVING REGARD, THEN, TO ALL THE ABOVE CONSIDERATIONS, WE FIND THAT ON THE DATE OF THE MAKING OF THE APPLICATION GIOVANNI GIAONA WAS A BRICKLAYER AND INCLUDED IN THE BARGAINING UNIT.

6. THE APPLICANT SEEKS TO EXCLUDE ANTONIO SERPA ON THE GROUND THAT HE EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. FOR PRESENT PURPOSES WE ARE ASSUMING THAT ON THE DATE OF THE MAKING OF THE APPLICATION SERPA WAS A WORKING FOREMAN. IN ADDITION, WE ARE ASSUMING THAT EXHIBIT #3 ATTACHED TO THE REPORT OF THE EXAMINER, BEING A CONTRACT OF SERVICE BETWEEN THE RESPONDENT AND SERPA, IS RELEVANT TO THE QUESTION OF SERPA'S STATUS ON THE DATE OF THE MAKING OF THE APPLICATION.

IT IS CLEAR THAT SERPA'S POWERS TO AFFECT THE EMPLOYMENT STATUS OF OTHER EMPLOYEES WERE NOT OF A KIND THAT IN THE OPINION OF THE BOARD WOULD BRING HIM WITHIN THE EXCLUSION ENVISAGED IN SECTION 1(3)(B) OF THE ACT. THE APPLICANT SUBMITS, HOWEVER, THAT THE CONTRACT BETWEEN SERPA AND THE RESPONDENT PUTS SERPA INTO THE MANAGERIAL CLASS. THE FIRST THING TO OBSERVE IS THAT THIS CONTRACT WAS NOT IN EFFECT ON THE DATE OF THE MAKING OF THE APPLICATION. IT RELATED TO ANOTHER JOB WHICH WAS COMPLETED SEVERAL WEEKS PRIOR TO MARCH 4, 1966, THE DATE OF THE MAKING OF THE PRESENT APPLICATION. THE APPLICANT ARGUES THAT, BECAUSE ON THE DATE OF THE MAKING OF THE APPLICATION SERPA WAS STILL BEING PAID ON A SALARY BASIS, AS ON THE PREVIOUS JOB COVERED BY EXHIBIT 3, HIS MANAGERIAL STATUS, WHICH THE APPLICANT SUBMITS SERPA HAD ON THE EARLIER JOB, CARRIED OVER TO THE SITE WHERE HE WAS WORKING ON MARCH 4TH. ASSUMING, BUT WITHOUT DECIDING, THAT SERPA EXERCISED MANAGEMENT FUNCTIONS ON THE EARLIER JOB, THERE IS NO EVIDENCE IN OUR VIEW TO SUGGEST THAT THAT STATUS CARRIED OVER TO MARCH 4. THERE IS NO SUGGESTION, FOR EXAMPLE, THAT SERPA WAS TO SHARE IN THE PROFITS ON THE COMPLETION OF THE JOB WHERE HE WAS WORKING ON MARCH 4TH, AND WITHOUT THAT, THERE IS NO BASIS FOR THE APPLICANT'S SUBMISSION. THE MERE FACT THAT SERPA WAS PAID ON A SALARY BASIS RATHER THAN ON AN HOURLY BASIS IS CLEARLY INSUFFICIENT TO PUT HIM INTO THE MANAGERIAL CLASS, AND AS WE HAVE POINTED OUT, HIS POWERS TO EFFECT THE EMPLOYMENT STATUS OF EMPLOYEES WERE NOT DIFFERENT FROM THOSE USUALLY HELD BY A WORKING FOREMAN NORMALLY INCLUDED IN A CONSTRUCTION INDUSTRY BARGAINING UNIT.

ON THE BASIS, THEN, OF THE EVIDENCE BEFORE US AND AFTER CAREFULLY CONSIDERING THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT ANTONIO SERPA WAS AN EMPLOYEE INCLUDED IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION.

7. KEEPING IN MIND THE ABOVE FINDINGS AND HAVING REGARD TO THE CONTENTS OF THE EXAMINER'S REPORT, THE BOARD FINDS FURTHER THAT ON THE DATE OF THE MAKING OF THE APPLICATION THERE WERE 21 PERSONS IN THE BARGAINING UNIT. THE APPLICANT FILED A TOTAL OF 9 COMBINATION CARDS AND RECEIPTS. THE BOARD IS THEREFORE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. IN THE RESULT, THEREFORE, THIS APPLICATION MUST BE DISMISSED.

8. IN VIEW OF THE ABOVE DETERMINATION, IT IS UNNECESSARY FOR THE BOARD TO SET FORTH ITS REASONS IN WRITING, AS IT INDICATED IT WOULD DO, FOR REFUSING LEAVE AT THE HEARING HELD ON JUNE 30, 1966, TO A GROUP OF EMPLOYEES TO FILE STATEMENTS OF OBJECTION AND TO MAKE REPRESENTATIONS FOLLOWING THE TERMINAL DATE OF THIS APPLICATION.

9. THE APPLICATION IS DISMISSED.

11821-66-R: TEXTILE WORKERS UNION OF AMERICA, CLC-AFL-CIO (APPLICANT) v. HARDING BRANTFORD LIMITED (RESPONDENT) v. THE CANADIAN TEXTILE COUNCIL, LOCAL 501 (INTERVENER).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND M. DAVIDSON FOR THE APPLICANT,
F. M. KEHOE FOR THE RESPONDENT, R. K. ROWLEY AND R. WILLIAMS FOR THE INTERVENER.

DECISION OF THE BOARD: (JULY 11, 1966).

1. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT AT ITS ELGIN STREET PLANT AT BRANTFORD. THE INTERVENER SUBMITS THAT IT ALREADY HOLDS THE BARGAINING RIGHTS FOR THE EMPLOYEES SOUGHT BY THE APPLICANT BY VIRTUE OF A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER. THE INTERVENER FURTHER SUBMITS THAT THE APPLICATION IS UNTIMELY BY REASON OF THE FACT THAT AS OF THE DATE OF APPLICATION THE RESPONDENT AND THE INTERVENER WERE IN CONCILIATION AND THE TIME PERIODS FIXED PURSUANT TO SECTION 46(2) OF THE ACT HAD NOT EXPIRED.

2. THE FOLLOWING EVIDENCE WAS ADDUCED AT THE BOARD HEARING IN THIS MATTER ON JUNE 14TH, 1966: HARDING CARPETS LIMITED HAS BEEN IN THE BUSINESS OF MANUFACTURING WOVEN CARPETING AT ITS PLANT ON MORRELL STREET IN BRANTFORD FOR MANY YEARS. ABOUT 1959, HARDING CARPETS LIMITED OPENED A NEW DIVISION OR DEPARTMENT AT ITS MORRELL STREET PLANT FOR THE MANUFACTURE OF TUFTED CARPETING. IN THE FALL OF 1964, TAKING ADVANTAGE OF FEDERAL LEGISLATION PROVIDING TAX INCENTIVES FOR PLANT EXPANSION IN THE BRANTFORD AREA, HARDING CARPETS LIMITED DECIDED TO EXPAND ITS TUFTED CARPETING OPERATIONS. IN ORDER, HOWEVER, TO GAIN THE TAX BENEFITS AVAILABLE UNDER THE LEGISLATION, HARDING BRANTFORD LIMITED WAS INCORPORATED AS A WHOLLY OWNED SUBSIDIARY OF HARDING CARPETS LIMITED TO BE THE VEHICLE FOR THE EXPANSION PROGRAM. IN ORDER TO COMPLY WITH THE PROVISIONS OF THE LEGISLATION IT WAS ALSO NECESSARY TO ESTABLISH SEPARATE PREMISES FOR THE NEW COMPANY. ACCORDINGLY A PLYWOOD PARTITION WAS ERECTED ADJACENT TO THE SPACE OCCUPIED BY THE TUFTING DIVISION OF HARDING CARPETS LIMITED IN ITS MORRELL STREET PLANT. THE EMPLOYEES OF HARDING CARPETS LIMITED CARRIED ON THE MANUFACTURE OF TUFTED CARPETING ON ONE SIDE OF THE PARTITION AND THE EMPLOYEES OF HARDING BRANTFORD LIMITED CARRIED ON THE SAME MANUFACTURING OPERATION ON THE OTHER SIDE OF THE PARTITION. ALTHOUGH IT APPEARS THAT THE TWO COMPANIES HAVE A COMMON MANAGEMENT AND THAT THERE HAS BEEN A SUBSTANTIAL INTERCHANGE OF EMPLOYEES BETWEEN THE COMPANIES, EACH COMPANY KEEPS SEPARATE RECORDS AND HAS SEPARATE PAYROLLS. THE EMPLOYEES ARE PAID IN ANY PARTICULAR WEEK BY THE COMPANY FOR WHOM THEY HAVE WORKED IN THAT WEEK.

3. THE EVIDENCE IS THAT HARDING CARPETS LIMITED (BRANTFORD PLANT) AND THE INTERVENER WERE PARTIES TO A COLLECTIVE AGREEMENT EFFECTIVE FROM MAY 25TH, 1964 TO MAY 24TH, 1966. THEIR AGREEMENT COVERS ALL EMPLOYEES OF HARDING CARPETS LIMITED AT ITS BRANTFORD PLANT WITH CERTAIN EXCEPTIONS WHICH ARE NOT HERE MATERIAL. AFTER HARDING BRANTFORD LIMITED WAS INCORPORATED IN THE FALL OF 1964, BUT BEFORE ANY EMPLOYEES WERE HIRED BY THAT COMPANY, REPRESENTATIVES OF BOTH HARDING CARPETS LIMITED AND THE INTERVENER EXECUTED A DOCUMENT WHICH READS AS FOLLOWS:

HARDING CARPETS LIMITED (BRANTFORD PLANT)
AND
CANADIAN TEXTILE COUNCIL, LOCAL 501

AMENDMENT TO COLLECTIVE AGREEMENT

OCTOBER 30, 1964.

THE COLLECTIVE AGREEMENT BETWEEN HARDING CARPETS LIMITED (BRANTFORD PLANT) AND THE CANADIAN TEXTILE COUNCIL, LOCAL 501, WHICH WAS MADE AND ENTERED INTO AS OF THE 22ND DAY OF MAY, 1964, IS HEREBY AMENDED TO PROVIDE THAT ALL OF THE TERMS OF SUCH AGREEMENT ALSO APPLY TO THE EMPLOYEES OF HARDING BRANTFORD LIMITED (BRANTFORD PLANT), AND THAT ALL SENIORITY AND OTHER CONTRACTUAL RIGHTS FOR EMPLOYEES WHO MAY BE TRANSFERRED TO HARDING BRANTFORD LIMITED SHALL BE RESPECTED.

NO ONE PURPORTED TO EXECUTE THE ABOVE QUOTED DOCUMENT ON BEHALF OF HARDING BRANTFORD LIMITED. THE RESPONDENT THEREUPON PROCEEDED TO HIRE EMPLOYEES FOR ITS TUFTED CARPETING OPERATIONS. AS OF MAY 27TH, 1966, THE DATE OF THE MAKING OF THE INSTANT APPLICATION, THERE WERE SOME 60 TO 70 PERSONS EMPLOYED BY THE RESPONDENT AT THE MORRELL STREET PLANT.

4. SOME TIME DURING 1965, ACCORDING TO THE EVIDENCE, MANAGEMENT DECIDED TO ESTABLISH AN AUTOMOTIVE DIVISION OF HARDING BRANTFORD LIMITED. IT WAS ENVISAGED THAT THE FUNCTIONS CARRIED ON BY EMPLOYEES OF THIS DIVISION WOULD BE TO PUT A SPECIAL BACKING ON TUFTED CARPETING WHICH WOULD THEN BE CUT, MOULDED AND FINISHED TO THE SPECIFICATIONS OF AUTOMOTIVE MANUFACTURERS WHO CONTRACTED TO BUY THE PRODUCT. DUE TO A SHORTAGE OF SPACE IN THE MORRELL STREET PLANT A NEW PLANT WAS CONSTRUCTED ON ELGIN STREET IN BRANTFORD TO HOUSE THE AUTOMOTIVE DIVISION OF HARDING BRANTFORD LIMITED. CONSTRUCTION OF THE PREMISES COMMENCED IN NOVEMBER OF 1965 AND WAS COMPLETED BY MARCH OF 1966. WHILE THE MACHINERY AND EQUIPMENT NEEDED TO MEET FORESEEABLE PRODUCTION REQUIREMENTS HAD BEEN INSTALLED AS OF THE DATE OF THE BOARD HEARING, THE OPERATION OF THE AUTOMOTIVE DIVISION WAS STILL IN THE EXPERIMENTAL STAGE AND ONLY SAMPLE CARPETS FOR AUTOMOBILES HAD BEEN PRODUCED. ACTUAL PRODUCTION WAS NOT EXPECTED TO COMMENCE UNTIL JULY OF THIS YEAR.

5. THE INTERVENER, WITHIN THE TIME PERIOD PRESCRIBED IN THE COLLECTIVE AGREEMENT EXPIRING MAY 24TH, 1966, WHICH IS REFERRED TO IN PARAGRAPH 3, SERVED NOTICE OF ITS DESIRE TO RENEGOTIATE THE AGREEMENT. THE INTERVENER SOMETIME IN APRIL APPLIED FOR AND WAS GRANTED CONCILIATION SERVICES. IN THE EARLY PART OF JUNE, BUT SUBSEQUENT TO THE DATE OF THE INSTANT APPLICATION, A COLLECTIVE AGREE-

MENT DATED JUNE 3RD, 1966, WHICH PURPORTS TO COVER ALL OF THE EMPLOYEES OF BOTH HARDING CARPETS LIMITED AND OF HARDING BRANTFORD LIMITED, WAS ENTERED INTO BY THE TWO COMPANIES AND THE INTERVENER. THE DURATION CLAUSE PROVIDES THAT THE AGREEMENT IS TO BE EFFECTIVE FROM MAY 25TH, 1966 TO MAY 24TH, 1968. ACCORDING TO THE EVIDENCE, THE COLLECTIVE AGREEMENT CONTAINS RATES OF PAY FOR ELEVEN OCCUPATIONAL CLASSIFICATIONS WHICH WILL BE REQUIRED TO OPERATE THE AUTOMOTIVE DIVISION OF HARDING BRANTFORD LIMITED.

6. THE INTERVENER SUBMITS THAT THE "AMENDMENT TO COLLECTIVE AGREEMENT" DATED OCTOBER 30TH, 1965 BROUGHT THE EMPLOYEES OF HARDING BRANTFORD LIMITED WITHIN THE SCOPE OF THE COLLECTIVE AGREEMENT THEN IN EFFECT BETWEEN HARDING CARPETS LIMITED AND THE INTERVENER, AND THAT THE INTERVENER THEREBY ACQUIRED THE BARGAINING RIGHTS FOR ALL OF THE EMPLOYEES OF HARDING BRANTFORD LIMITED. THE APPLICANT SUBMITS THAT SINCE HARDING BRANTFORD LIMITED WAS NOT A PARTY TO THE PURPORTED AMENDMENT TO THE COLLECTIVE AGREEMENT THE INTERVENER DID NOT ACQUIRE THE BARGAINING RIGHTS FOR THE EMPLOYEES OF THAT COMPANY.

7. A GENERAL PRINCIPLE OF THE LAW OF CONTRACTS IS THAT A THIRD PARTY, HERE HARDING BRANTFORD LIMITED, CANNOT BE BOUND BY AN AGREEMENT ENTERED INTO BY TWO OTHER PARTIES, IN THIS CASE THE INTERVENER AND HARDING CARPETS LIMITED. FURTHER, ALTHOUGH HARDING CARPETS LIMITED IS A WHOLLY OWNED SUBSIDIARY OF HARDING CARPETS LIMITED AND APPEARS TO HAVE A COMMON MANAGEMENT THE COMPANIES ARE SEPARATE AND DISTINCT FUNCTIONING ENTITIES. SINCE THERE IS NO EVIDENCE THAT HARDING CARPETS LIMITED PURPORTED TO OR, IN FACT, DID EXECUTE THE AMENDMENT TO THE COLLECTIVE AGREEMENT IN EFFECT WITH THE INTERVENER AS AGENT FOR THE RESPONDENT, THE BOARD FINDS THAT THE INTERVENER DID NOT ACQUIRE THE BARGAINING RIGHTS FOR ANY OF THE EMPLOYEES OF THE RESPONDENT BY VIRTUE OF THE "AMENDMENT TO COLLECTIVE AGREEMENT" DATED OCTOBER 30TH, 1964, EXECUTED BY HARDING CARPETS LIMITED WITH THE INTERVENER. WE WOULD FURTHER POINT OUT THAT EVEN IF HARDING BRANTFORD LIMITED HAD BEEN A PARTY TO THE PURPORTED AMENDMENT TO THE COLLECTIVE AGREEMENT, THE INTERVENER STILL COULD NOT HAVE ACQUIRED THE BARGAINING RIGHTS FOR THE EMPLOYEES OF HARDING BRANTFORD LIMITED, SINCE ACCORDING TO THE EVIDENCE, AT THE TIME THE DOCUMENT WAS EXECUTED, HARDING BRANTFORD LIMITED HAD NO EMPLOYEES. WE WOULD ALSO MENTION THAT THE NEW COLLECTIVE AGREEMENT DATED JUNE 3RD, 1966 PURPORTING TO COVER THE EMPLOYEES OF BOTH HARDING CARPETS LIMITED AND THE RESPONDENT IS NOT A BAR TO THIS APPLICATION SINCE IT WAS NOT EXECUTED UNTIL AFTER THE APPLICANT MADE ITS APPLICATION ON MAY 27TH, 1966. FOR THE BOARD TO TAKE ANY OTHER POSITION WOULD HAVE THE EFFECT OF FRUSTRATING THE WHOLE CERTIFICATION PROCEDURE PROVIDED FOR UNDER THE ACT.

8. THERE REMAINS, HOWEVER, THE QUESTION AS TO WHETHER THE EMPLOYEES OF HARDING BRANTFORD LIMITED IN ITS AUTOMOTIVE DIVISION LOCATED AT ITS ELGIN STREET PLANT CONSTITUTE AN APPROPRIATE BARGAINING UNIT SEPARATE AND APART FROM THE EMPLOYEES OF HARDING BRANTFORD LIMITED LOCATED AT THE MORRELL STREET PLANT.

9. THE INTERVENER FILED IN EVIDENCE A DOCUMENT DATED DECEMBER 3RD, 1965 ENTITLED "SECTIONAL SENIORITY LISTS" WHICH SHOWS THE SENIORITY OF EACH EMPLOYEE BY DEPARTMENT. THE EMPLOYEES OF HARDING BRANTFORD LIMITED AND THE EMPLOYEES OF HARDING CARPETS LIMITED ARE LISTED TOGETHER UNDER THE SINGLE HEADING "TUFTING DEPARTMENT". THE INTERVENER APPEARS TO CONTEND THAT THE COMMON SENIORITY LIST LENDS SUPPORT FOR A FINDING BY THE BOARD THAT A SINGLE UNIT COVERING THE EMPLOYEES OF BOTH COMPANIES IS APPROPRIATE FOR COLLECTIVE BARGAINING THE INTERVENER ALSO DREW TO THE BOARD'S ATTENTION THAT TWO OF THE EMPLOYEES OF HARDING

BRANTFORD LIMITED ON THE "TUFTING DEPARTMENT" LIST WERE TRANSFERRED IN MARCH OF THIS YEAR TO THE AUTOMOTIVE DIVISION OF THE COMPANY. ON THIS EVIDENCE THE INTERVENER APPEARS TO SUGGEST THAT ALTERNATIVELY AT LEAST ALL OF THE EMPLOYEES OF HARDING BRANTFORD LIMITED SHOULD BE INCLUDED IN THE SAME BARGAINING UNIT.

10. WE WOULD POINT OUT THAT THE COMMON SENIORITY LIST FOR THE EMPLOYEES OF THE TWO COMPANIES WAS PREPARED AT A TIME WHEN THE RESPONDENT, ALTHOUGH MISTAKENLY, BELIEVED THAT THE EMPLOYEES OF BOTH COMPANIES COMPOSED A SINGLE BARGAINING UNIT REPRESENTED BY THE INTERVENER. FURTHER, ALTHOUGH THE COMMON SENIORITY LIST DOES DEMONSTRATE THE CLOSE RELATIONSHIP BETWEEN THE COMPANIES, AS HAS BEEN MENTIONED PREVIOUSLY, THE EVIDENCE ALSO SHOWS THAT HARDING CARPETS LIMITED AND HARDING BRANTFORD LIMITED ARE DISTINCT FULLY OPERATIONAL COMPANIES WITH SEPARATE RECORDS AND PAYROLLS FOR THEIR RESPECTIVE EMPLOYEES. SINCE THE TWO COMPANIES ARE SEPARATE EMPLOYERS, THEIR EMPLOYEES ARE NOT ELIGIBLE FOR INCLUSION IN THE SAME BARGAINING UNIT, AS THE BOARD HAS JURISDICTION ONLY TO CERTIFY FOR A SINGLE EMPLOYER. WE WOULD POINT OUT AS WELL THAT THE INTERVENER ALREADY HOLDS THE BARGAINING RIGHTS FOR THE EMPLOYEES OF HARDING CARPETS LIMITED. FINALLY, THE FACT THAT TWO PERSONS EMPLOYED IN THE TUFTING CARPET DIVISION OF HARDING BRANTFORD LIMITED WERE TRANSFERRED TO ITS AUTOMOTIVE DIVISION WHEN THE ELGIN STREET PLANT WAS OPENED IN MARCH IN NO WAY SUPPORTS THE INTERVENER'S ARGUMENT THAT A UNIT COMPOSED OF THE EMPLOYEES OF THE RESPONDENT AT BOTH PLANTS CONSTITUTES AN APPROPRIATE UNIT. IF, THERE WAS EVIDENCE OF INTERCHANGE OF EMPLOYEES OF THE RESPONDENT BETWEEN THE MORRELL STREET AND THE ELGIN STREET PLANTS IT WOULD BE A DIFFERENT SITUATION. NO SUGGESTION WAS MADE BY THE RESPONDENT, HOWEVER, THAT THERE WOULD BE INTERCHANGE OF EMPLOYEES BETWEEN THE TWO PLANTS.

11. ON THE EVIDENCE BEFORE US THERE ARE NO SPECIAL CIRCUMSTANCES IN THE INSTANT CASE WHICH CAUSES THE BOARD TO DEPART FROM ITS USUAL POLICY IN APPLICATIONS FOR CERTIFICATION FOR BARGAINING UNITS OF INDUSTRIAL EMPLOYEES, OF GRANTING UNITS ON AN INDIVIDUAL PLANT BASIS. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS ELGIN STREET PLANT AT BRANTFORD, SAVE AND EXCEPT FOREMEN AND DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF FOREMAN AND DEPARTMENT HEAD, FIXERS, MOULD MAKERS, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

12. REPRESENTATIONS WERE MADE AT THE BOARD HEARING IN THIS MATTER, THAT EVEN IF THE BOARD FOUND THAT THE EMPLOYEES OF THE RESPONDENT AT THE ELGIN STREET PLANT WERE APPROPRIATE FOR COLLECTIVE BARGAINING, THE APPLICATION IS PREMATURE BY REASON OF A BUILD-UP IN THE WORK FORCE OF THE RESPONDENT AT THE ELGIN STREET PLANT. THE EVIDENCE IS THAT AS OF MAY 27TH, 1966, THE DATE OF APPLICATION THERE WERE FIVE EMPLOYEES AT THE ELGIN STREET LOCATION AND ONLY FIVE OF ELEVEN OCCUPATIONAL CLASSIFICATIONS THAT WILL BE REQUIRED WERE REPRESENTED. FRANCIS M. KEHOE, THE INDUSTRIAL RELATIONS MANAGER FOR BOTH HARDING CARPETS LIMITED AND HARDING BRANTFORD LIMITED TESTIFIED THAT ON THE BASIS OF A FIRM CONTRACT WITH A MAJOR AUTOMOTIVE COMPANY FOR AUTOMOBILE CARPETING FOR ITS 1967 MODELS AND ON THE BASIS OF OTHER REASONABLY ANTICIPATED CONTRACTS, PROJECTED PRODUCTION IN THE AUTOMOTIVE DIVISION WILL RESULT IN THE RESPONDENT REQUIRING THE SERVICES OF FROM 12 TO 15 EMPLOYEES BY JULY WHEN ACTUAL PRODUCTION BEGINS, 25 TO 30 EMPLOYEES BY SEPTEMBER AND 30 TO 40 EMPLOYEES BY NOVEMBER, 1966.

13. AS WAS STATED IN THE EMIL FRANT AND PETER WASELOVICH CASE (1957) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 155159, ¶16,057, C.L.S. 76-539, THE BOARD IS FACED WITH THE TASK OF BALANCING THE RIGHTS OF PERSONS PRESENTLY

EMPLOYED TO COLLECTIVE BARGAINING AND THE RIGHTS OF FUTURE EMPLOYEES TO SELECT A BARGAINING AGENT OF THEIR OWN CHOICE. THE CONSIDERATIONS WHICH THE BOARD HAS TAKEN INTO ACCOUNT WERE SET OUT IN THE ABOVE DECISION IN THE FOLLOWING LANGUAGE:

FACED WITH THIS CONFLICT OF INTERESTS, THE BOARD HAS, IN THE PAST, IN SOME CASES REFUSED TO CERTIFY OR ORDER AN IMMEDIATE VOTE--AND HAS DIRECTED THAT A VOTE BE TAKEN AT A LATER DATE--WHERE, ON ALL THE EVIDENCE, IT APPEARED TO THE SATISFACTION OF THE BOARD THAT THE EMPLOYEES DID NOT CONSTITUTE A SUBSTANTIAL AND REPRESENTATIVE SEGMENT OF THE WORK FORCE TO BE EMPLOYED. OF COURSE IN SUCH CASES IT MUST BE ESTABLISHED THAT THERE IS A REAL LIKELIHOOD THAT THE INCREASE IN THE WORK FORCE WILL TAKE PLACE WITHIN A REASONABLE PERIOD OF TIME AND, IF IT APPEARS THAT THE BUILD-UP DEPENDS ON FACTORS BEYOND THE CONTROL OF THE EMPLOYER SUCH AS THE SALEABILITY OF PRODUCTS, THE PRESENCE OF SUFFICIENT WORKERS OR THE AVAILABILITY OF MATERIALS FOR, SAY, THE PURPOSE OF PLANT EXPANSION, THE BOARD, INSTEAD OF DIRECTING A VOTE TO BE HELD IN THE FUTURE, MAY CERTIFY OR ORDER AN IMMEDIATE VOTE DEPENDING ON THE MEMBERSHIP POSITION OF THE APPLICANT.

ON THE BASIS OF THESE CONSIDERATIONS AND THE EVIDENCE BEFORE US, HAVING PARTICULAR REGARD TO THE FACT THAT THE RESPONDENT DOES HAVE A FIRM CONTRACT FOR ITS PRODUCT, THE BOARD IS SATISFIED BOTH THAT THE RESPONDENT HAS A PLANNED PROGRAM TO INCREASE IN ITS WORK FORCE AT ITS ELGIN STREET PLANT AND THAT THERE IS A REAL LIKELIHOOD THAT THE INCREASE WILL TAKE PLACE IN THE SPECIFIED PERIOD. THE BOARD THEREFORE WILL POSTPONE THE MAKING OF ANY FINAL DETERMINATION ON THIS APPLICATION UNTIL A FUTURE DATE. IN ORDER, HOWEVER, TO KEEP THE BOARD INFORMED AS TO THE PROGRESS OF THE BUILD-UP, WE DIRECT THAT THE RESPONDENT REPORT TO THE BOARD ON THE NUMBERS AND OCCUPATIONAL CLASSIFICATIONS OF PERSONS IN ITS EMPLOY IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. THE FIRST REPORT IS TO BE SUBMITTED TO THE BOARD FORTHWITH. SUCCEEDING REPORTS ARE TO BE MADE AT THE BEGINNING OF EACH MONTH THEREAFTER COMMENCING WITH THE MONTH OF AUGUST AND WILL CONTINUE TO BE MADE UNTIL THE BOARD OTHERWISE DIRECTS.

11839-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL NO. 721 (APPLICANT) v. MOLLENHAUER CONTRACTING COMPANY LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (JULY 5, 1966).

1. THE APPLICANT HAS FILED A DULY COMPLETED FORM 59, STATEMENT ON STATUS OF TRADE UNION, CONSTRUCTION INDUSTRY. THE APPLICANT ALSO FILED ONE CERTIFICATE OF MEMBERSHIP. THE CERTIFICATE IS SIGNED BY THE MEMBER AND INDICATES THAT MONTHLY DUES OF \$10.50 HAVE BEEN PAID FOR AT LEAST ONE MONTH WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE CERTIFICA

IS CHECKED AND CERTIFIED CORRECT BY AN OFFICER OF THE APPLICANT. THE APPLICANT ALSO FILED TWO APPLICATIONS FOR MEMBERSHIP ACCOMPANIED BY RECEIPTS. THE APPLICATIONS ARE SIGNED BY THE EMPLOYEES AND THE RECEIPTS ARE COUNTERSIGNED AND INDICATE THAT A PAYMENT OF AT LEAST \$1.00 HAS BEEN MADE WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE MONEY WAS COLLECTED BY ONE PERSON. THE APPLICANT FILED A DULY COMPLETED FORM 60, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

2. THE RESPONDENT FILED A REPLY, A LIST OF EMPLOYEES CONTAINING EIGHT NAMES AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. SEVEN OF THE EMPLOYEES APPEARING ON THE LIST FILED BY THE RESPONDENT ARE CLASSIFIED AS LABOURERS AND ONE EMPLOYEE IS CLASSIFIED AS A RODMAN.

3. IN ITS REPLY THE RESPONDENT REQUESTED THE HEARING FOR THE FOLLOWING REASONS:

"ONLY W. MANLY IS A SKILLED RODMAN. THE OTHERS ARE UNSKILLED LABOURERS WHO ARE ASSISTING W. MANLY. WHEN NOT SETTING REINFORCING THEY DO OTHER MISCELLANEOUS LABOURING WORK.

ALL REINFORCING WILL BE COMPLETED IN ABOUT SIX WEEKS AND THERE WILL BE NO RODMEN REQUIRED AFTER THAT TIME.

OUR COMPANY HAS NO OTHER WORK IN THIS AREA."

AS A RESULT OF THE FIRST GROUND ADVANCED AND BECAUSE OF THE POSITION TAKEN BY THE APPLICANT WITH RESPECT THERETO, THE BOARD APPOINTED AN EXAMINER "TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT."

THE REPORT OF THE EXAMINER WAS MAILED REGISTERED SPECIAL DELIVERY TO THE PARTIES ON JUNE 22, 1966. THERE WERE NO OBJECTIONS TO THE EXAMINER'S REPORT AND NO REQUEST FOR A HEARING WITH RESPECT THERETO.

THE OTHER REASONS ADVANCED IN SUPPORT OF THE RESPONDENT'S REQUEST FOR A HEARING ARE NOT MATTERS, WHICH IN OUR VIEW, REQUIRE A HEARING BY THE BOARD. ASSUMING THE FACTS ASSERTED ARE CORRECT, THESE ARE MATTERS WHICH ARE MORE PROPERLY THE SUBJECT OF COLLECTIVE BARGAINING BETWEEN THE PARTIES IF AND WHEN A CERTIFICATE ISSUES. MOREOVER, AS THE BOARD POINTED OUT IN MOLLENHAUER CONTRACTING COMPANY LIMITED, BOARD FILE NO. 11435-65-R "THE FACT THAT THE JOB AFFECTED BY THE APPLICATION MAY BE FINISHED OR MAY BE CLOSE TO TERMINATION AFTER THE FILING OF AN APPLICATION FOR CERTIFICATION -- IS NOT A FACTOR WHICH THIS BOARD TAKES INTO CONSIDERATION IN REACHING A DECISION ON SUCH AN APPLICATION. REFERENCE IS MADE TO THE NADECO LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1964, P. 608."

IN THE RESULT, THEREFORE, THE BOARD DOES NOT DEEM IT NECESSARY TO PUT THIS MATTER ON FOR HEARING. SEE SECTION 75(9A) OF THE LABOUR RELATIONS ACT.

4. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

5. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

6. THE BOARD FURTHER FINDS THAT ALL RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. IN JOHNSON-KIEWIT SURWAY CORPORATION, BOARD FILE NO. 11631-66-R, THE BOARD SAID:

"IN CONSTRUCTION INDUSTRY CASES IT HAS BEEN THE PRACTICE OF THE BOARD WHERE EMPLOYEES ENGAGE IN THE WORK OF DIFFERENT CRAFTS (AND WHERE THEY ARE PAID ONLY ONE RATE) TO CHARACTERIZE THE CRAFT IN WHICH THEY ARE EMPLOYED FOR A MAJORITY OF THEIR TIME AS THE ONE GOVERNING THEIR STATUS ON AN APPLICATION FOR CERTIFICATION. SEE, FOR EXAMPLE, O. J. GAFFNEY LIMITED, O.L.R.B. MONTHLY REPORT, AUGUST 1964, P. 233; MCNAMARA CONSTRUCTION OF ONTARIO LIMITED, O.L.R.B. MONTHLY REPORT, DECEMBER, 1964, P. 419; NEDAN FORMING COMPANY LIMITED, O.L.R.B. MONTHLY REPORT, MAY, 1965, P. 100.

IT IS CLEAR ON EXAMINING THESE AND OTHER CASES THAT WHEN THE BOARD SPEAKS OF 'EMPLOYED FOR A MAJORITY OF THEIR TIME' REFERENCE IS BEING MADE NOT TO EMPLOYMENT ON THE DATE OF THE MAKING OF THE APPLICATION BUT, RATHER, TO A PERIOD OF TIME LEADING UP TO THE DATE OF THE APPLICATION. THE CASES HOWEVER DO NOT REFER TO ANY FIXED PERIOD SUCH AS TWO WEEKS OR A MONTH PRIOR TO THE APPLICATION. JUST HOW FAR BACK THE BOARD WILL GO DEPENDS ON THE PARTICULAR CIRCUMSTANCES OF THE INDIVIDUAL CASE."

HAVING REGARD TO THE ABOVE PRINCIPLES, AND TO THE CONTENTS OF THE EXAMINER'S REPORT, DATED JUNE 22, 1966, THE BOARD FINDS THAT W. MANLY, B. NOGANASH AND F. SNACHE ARE INCLUDED IN THE BARGAINING UNIT, BUT THAT THE FOUR CARPENTERS C. ST. GERMAIN, A. LEDUC, A. CATHCART AND R. ARMSTRONG ARE NOT INCLUDED IN THE BARGAINING UNIT.

THE BOARD NOTES THE ADMISSION BY THE APPLICANT THAT A. CURRIE AND L. YORK ARE INCLUDED IN THE BARGAINING UNIT.

ON THE DATE OF THE MAKING OF THE APPLICATION THE BOARD, THEREFORE, FINDS THAT THERE WERE FIVE EMPLOYEES IN THE BARGAINING UNIT.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11840-66-R: TORONTO MOTION PICTURE FILM EXCHANGE EMPLOYEE UNION LOCAL NO. B73, OF INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA (APPLICANT) V. VICTORIA SHIPPING SERVICE LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: THOMAS SHARP FOR THE APPLICANT,
JOSEPH BROWN FOR THE RESPONDENT.

DECISION OF THE BOARD: (JUNE 30, 1966)

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE RESPONDENT FILED A LIST OF 15 EMPLOYEES WHO WOULD BE INCLUDED IN THE BARGAINING UNIT DESCRIBED ABOVE. THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT CONSISTED OF COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT CARDS ON BEHALF OF 15 PERSONS WHOSE NAMES APPEAR ON THE LIST FILED BY THE RESPONDENT AND MEMBERSHIP AND DUES RECORD CARDS ON BEHALF OF 13 OF THE 15 PERSONS. FIVE OF THE COMBINATION APPLICATION AND RECEIPT CARDS WERE DATED WITHIN SIX MONTHS OF THE APPLICATION AND INDICATE AN INITIATION FEE OF \$10.00 IN EACH CASE AND WERE SIGNED BY THE MEMBERS. ONE OF THE COMBINATION APPLICATION AND RECEIPT CARDS IS DATED WITHIN SIX MONTHS BUT DOES NOT INDICATE THAT ANY INITIATION FEE WAS PAID AND THE SIGNATURE OF THE EMPLOYEE IS A PRINTED SIGNATURE. THIS COMBINATION APPLICATION RECEIPT CARD IS ACCOMPANIED BY A MEMBERSHIP DUES RECORD CARD WHICH IS NOT SIGNED BY THE MEMBER. ANOTHER COMBINATION APPLICATION AND RECEIPT IS DATED MORE THAN ONE YEAR PRIOR TO THE APPLICATION BEING MADE AND INDICATES AN INITIATION FEE OF \$10.00 WAS PAID BUT IS NOT ACCOMPANIED BY A MEMBERSHIP AND DUES RECORD CARD. A FURTHER COMBINATION APPLICATION RECEIPT CARD SIGNED BY THE MEMBER IS NOT DATED AND DOES NOT INDICATE THAT AN INITIATION FEE WAS PAID. ANOTHER COMBINATION APPLICATION RECEIPT CARD DATED MORE THAN ONE YEAR PRIOR TO THE MAKING OF THE APPLICATION BEARS A PRINTED SIGNATURE OF THE MEMBER AND INDICATES AN INITIATION FEE OF \$10.00. THIS COMBINATION APPLICATION RECEIPT CARD IS ACCOMPANIED BY A MEMBERSHIP AND DUES RECORD CARD WHICH DOES NOT BEAR THE SIGNATURE OF THE MEMBER. THERE WAS ALSO FILED SIX COMBINATION APPLICATION AND RECEIPT CARDS EACH OF WHICH BEARS THE SIGNATURE OF THE MEMBER AND INDICATES AN INITIATION FEE OF AT LEAST \$2.00 PAID IN EACH CASE AND ARE DATED MORE THAN ONE YEAR PRIOR TO THE MAKING OF THE APPLICATION. ALL SIX OF SUCH CARDS ARE ACCOMPANIED BY A MEMBERSHIP AND DUES RECORD CARD. WITH ONE EXCEPTION, NONE OF THE MEMBERSHIP AND DUES RECORD CARDS BEAR THE SIGNATURES OF THE MEMBER.

5. ALL OF THE MEMBERSHIP AND DUES RECORD CARDS REFERRED TO ABOVE BEAR THE SIGNATURE OF THE PRESIDENT AND SECRETARY OF THE APPLICANT TOGETHER WITH THE APPLICANT'S OFFICIAL SEAL. EACH OF THE MEMBERSHIP AND DUES RECORD CARDS INDICATE THE PAYMENT OF DUES WITHIN SIX MONTHS OF THE DATE OF THIS APPLICATION AND ALL SUCH PAYMENTS ARE INITIAL. IN ADDITION TO THE FIRST FIVE COMBINATION APPLICATION AND RECEIPT CARDS REFERRED TO ABOVE, THE MEMBERSHIP POSITION OF THE APPLICANT MUST BE CREDITED WITH SOME OF THE COMBINATION APPLICATION AND RECEIPT CARDS WHICH ARE MORE THAN ONE YEAR OLD WHICH ARE ACCOMPANIED BY THE MEMBERSHIP AND DUES RECORD CARDS REFERRED TO ABOVE. THE BOARD, IN THE HIGHLAND CONSTRUCTION Co. CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER, 1961, P. 266, DETERMINED IN A SIMILAR CASE THAT THE APPLICATION MUST FAIL BECAUSE THE DUES RECORD CARDS WERE NOT SIGNED BY THE MEMBER NOR WERE PAYMENTS RECORDED IN THE DUES RECORD BOOKS VERIFIED BY AN OFFICER OF THE UNION. THE BOARD STATED THEREIN AS FOLLOWS:

"THE BOARD FINDS THAT THE DOCUMENTARY EVIDENCE OF MEMBERSHIP IN THE APPLICANT FILED IN THIS MATTER DOES NOT SATISFY THE BOARD'S REQUIREMENTS DUE TO THE FACT THAT THE APPLICATION FOR MEMBERSHIP FORMS ARE MORE THAN ONE YEAR OLD AND THERE IS NO PROOF OF COLLECTION OF MONTHLY DUES SIGNED BY A RESPONSIBLE OFFICER OF THE UNION."

6. THE FACTS IN THE HIGHLAND CONSTRUCTION Co. CASE ARE READILY DISTINGUISHABLE FROM THE FACTS IN THE INSTANT CASE. IN THIS CASE THERE IS PROOF OF COLLECTION OF MONTHLY DUES SIGNED BY A RESPONSIBLE OFFICER OF THE UNION.

7. THE BOARD THEREFORE FINDS THAT THE SIX COMBINATION APPLICATION RECEIPT CARDS WHICH ARE MORE THAN ONE YEAR OLD AND WHICH BEAR THE SIGNATURE OF THE MEMBER AND INDICATE A PAYMENT ON ACCOUNT OF INITIATION DUES AND WHICH ARE SUPPORTED BY THE MEMBERSHIP DUES RECORD CARDS VERIFIED BY A RESPONSIBLE OFFICIAL OF THE UNION INDICATING A PAYMENT OF MONTHLY DUES WITHIN SIX MONTHS OF THE DATE OF THE APPLICATION MEET THE BOARD'S REQUIREMENTS WITH RESPECT TO MEMBERSHIP EVIDENCE AS SET FORTH IN THE FIRESTONE TIRE & RUBBER COMPANY OF CANADA LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1949-54 ¶17,022; C.L.S. 76-313 AND THE BEN BRUINSMA CASE, O.L.R.B. MONTHLY REPORT, JULY, 1963, PAGE 223.

8. THE BOARD IS THEREFORE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11854-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS (APPLICANT) v. IMPERIAL PAVING CO. LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: S. L. ROBINS, Q.C. AND M. J. BURR FOR THE APPLICANT, A. A. MORACHER FOR THE RESPONDENT AND J. K. SIMS, Q.C. AND CHAS. GREEN FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (JULY 4, 1966).

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3. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

4. IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF THE CITIES OF KITCHENER AND WATERLOO AND ALL OF THE TOWNSHIP OF WATERLOO EXCEPTING THAT PORTION OF TOWNSHIP LYING SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF WATERLOO WELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD; THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTHWESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD NO. 6; THENCE ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

THE BOARD NOTES FURTHER THAT THE RESPONDENT DID NOT HAVE WORKING FOREMEN ON THE DATE OF THE MAKING OF THE APPLICATION.

5. THERE WERE FILED IN THIS CASE SIX LETTERS SIGNED BY EMPLOYEES (HEREIN-AFTER REFERRED TO AS "PETITIONS") OBJECTING TO THE APPLICATION. AT THE HEARING HELD IN THIS MATTER THE BOARD HEARD EVIDENCE RESPECTING THE ORIGINATION OF THESE LETTERS AND THE CIRCUMSTANCES UNDER WHICH THEY WERE SIGNED AND SENT TO THE BOARD. THE QUESTION TO BE DETERMINED IS WHETHER THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT IS WEAKENED BY THE FACT THAT SOME OF THE PERSONS FOR WHOM SUCH EVIDENCE WAS SUBMITTED ALSO SIGNED PETITIONS.

IT SHOULD BE STATED AT THE OUTSET THAT THERE IS NOTHING IN THE EVIDENCE TO SUGGEST THAT THERE IS ANYTHING WRONG WITH THE PETITION SIGNED BY THE EMPLOYEE JUST AFTER WORK FINISHED ON FRIDAY, JUNE 10TH. ASSUMING SUCH PERSON ALSO SIGNED A UNION CARD (THERE IS NO EVIDENCE ON THIS ONE WAY OR THE OTHER) AND THAT DOUBT IS THEREFORE CAST ON THAT CARD, THE APPLICANT WOULD STILL HAVE SIX CARDS FREE FROM DOUBT AND THIS WOULD BE SUFFICIENT FOR OUTRIGHT CERTIFICATION. THE QUESTION THEREFORE REVOLVES AROUND THE PETITIONS SIGNED AT THE HOME OF GREEN, THE INSTIGATOR OF THE PETITIONS, LATER ON THAT EVENING.

IN CASES OF THIS KIND THE REAL ISSUE IS ALL TOO OFTEN LOST SIGHT OF IN THE PARTIES' ATTEMPT TO PROVE OR DISPROVE THAT MANAGEMENT HAS VIOLATED SOME SECTION OF THE LABOUR RELATIONS ACT. IT MUST BE REMEMBERED THAT ON THE ONE HAND THE APPLICANT SUBMITS EVIDENCE OF MEMBERSHIP CONSISTING, NORMALLY, OF AN APPLICATION CARD TO JOIN THE APPLICANT UNION, SIGNED BY THE EMPLOYEE AND A RECEIPT INDICATING PAYMENT BY THE EMPLOYEE OF AT LEAST ONE DOLLAR TOWARDS INITIATION FEES OR DUES. THE RECEIPT IS SIGNED BY THE COLLECTOR AND IS COUNTERSIGNED BY THE EMPLOYEE. ON THE OTHER HAND, IN SOME CASES THERE IS FILED WITH THE BOARD A

DOCUMENT SIGNED BY A GROUP OF EMPLOYEES OR, AS IN THIS CASE, INDIVIDUAL DOCUMENTS SIGNED BY EMPLOYEES, SAYING SIMPLY THAT THESE PARTICULAR EMPLOYEES DO NOT WANT THE APPLICANT TO REPRESENT THEM. THESE LATTER DOCUMENTS - PETITIONS - MAY BE SIGNED BOTH BY PERSONS WHO HAVE NOT JOINED THE UNION AND BY SOME WHO HAVE. THE TASK FACING THE BOARD IS TO DETERMINE WHETHER THE PETITIONS CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP SO AS TO REQUIRE CONFIRMATION OF THAT EVIDENCE BY MEANS OF A REPRESENTATION VOTE. IN MAKING THIS DETERMINATION THE BOARD IS CONCERNED, PRIMARILY, WITH THE QUESTION AS TO WHETHER THE PETITIONS WERE SIGNED FREELY AND VOLUNTARILY AND TRULY REPRESENT THE WISHES OF THE EMPLOYEES. THE FACT THAT MANAGEMENT MAY HAVE INTENTIONALLY SET OUT TO UNDULY INFLUENCE THE EMPLOYEES TO SIGN PETITIONS, CONTRARY TO THE ACT, IS ONLY ONE FACET OF THE PROBLEM. MANAGEMENT MAY, BY ITS ACTIONS, INFLUENCE EMPLOYEES UNINTENTIONALLY AND QUITE BY ACCIDENT BUT IF THE BOARD IS SATISFIED THAT THE EMPLOYEES WHO SIGNED THE PETITIONS WERE SO INFLUENCED THIS MAY WELL BE A DECISIVE FACTOR IN DETERMINING THE OVERALL WEIGHT TO BE GIVEN THE EVIDENCE OF MEMBERSHIP.

IN THE PRESENT CASE WE AGREE WITH COUNSEL FOR THE RESPONDENT AND THE OBJECTORS THAT THERE IS NO EVIDENCE TO SUGGEST THAT THE RESPONDENT ORIGINATED, ASSISTED OR IN ANY ACTIVE WAY BROUGHT ABOUT THE PETITIONS FILED WITH THE BOARD. ON THE OTHER HAND WE ARE FACED WITH THE FACT THAT A FOREMAN, A MEMBER OF MANAGEMENT, AT GREEN'S REQUEST, EITHER BROUGHT OR LED SOME OF THE EMPLOYEES WHO SIGNED THE PETITIONS TO GREEN'S HOUSE ON THE FRIDAY EVENING IN QUESTION. WHILE GREEN TESTIFIED THAT THE REASON HE ASKED THE FOREMAN TO SHOW THEM THE WAY WAS BECAUSE THE FOREMAN, WHO KNEW THE WAY, WAS COMING ON A SOCIAL VISIT AND THE OTHERS WOULD FIND IT DIFFICULT BECAUSE OF DETOURS TO LOCATE GREEN'S HOME, THE EMPLOYEES KNEW THAT THE PURPOSE OF THIS VISIT WAS TO DISCUSS THE UNION. THE EMPLOYEES DISCUSSED THE MATTER FOR UPWARDS OF THREE HOURS IN THE KITCHEN OF GREEN'S HOME AND THEN SIGNED THE PETITIONS. WHILE THE FOREMAN DID NOT PARTICIPATE IN THESE DISCUSSIONS AND REMAINED IN THE LIVING ROOM THROUGHOUT, IT IS CLEAR THAT THE EMPLOYEES KNEW HE WAS THERE. AFTER THE PETITIONS WERE SIGNED, THE EMPLOYEES AND THE FOREMAN REMAINED IN GREEN'S HOME FOR SOME TIME. GREEN AND THE FOREMAN WERE CLOSE FRIENDS AND, ON THE EVIDENCE BEFORE US, THE OTHER EMPLOYEES MUST HAVE BEEN AWARE OF THIS.

IT WAS CLEAR FROM THE EVIDENCE THAT BOTH GREEN AND THE FOREMAN KNEW THAT THE FOREMAN SHOULD NOT TALK TO THE EMPLOYEES ABOUT THE PETITIONS. ASSUMING, HOWEVER, AS WE DO, THAT THE ACTIONS OF GREEN AND THE FOREMAN ON THE FRIDAY EVENING WERE ENTIRELY INNOCENT AND FREE FROM ANY ILL MOTIVE, ALBEIT SOMEWHAT NAIVE, WE ARE NOT SATISFIED THAT PETITIONS SIGNED IN SUCH CIRCUMSTANCES REPRESENT A FREE AND VOLUNTARY DECLARATION OF INTENT ON THE PART OF THE EMPLOYEES WHO SIGNED BOTH MEMBERSHIP CARDS AND THE PETITIONS. IN CONSIDERING ALL THE EVIDENCE WE ARE SATISFIED NOT ONLY THAT THE FOREMAN KNEW THE PURPOSE OF THE MEETING BUT THAT THE EMPLOYEES WOULD KNOW THAT HE KNEW AND FURTHER THAT THERE WAS EVERY LIKELIHOOD THAT HE WOULD LEARN THE NAMES OF ANY PERSONS WHO SIGNED OR REFUSED TO SIGN THE PETITIONS.

HAVING REGARD THEN TO THE ABOVE CONSIDERATIONS, WE ARE NOT SATISFIED THAT THE PETITIONS SO WEAKEN THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT AS TO REQUIRE THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11894-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1250
(APPLICANT) v. DOUGLAS BREMNER CONTRACTORS & BUILDERS LTD. (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (JULY 18, 1966).

1. THE APPLICANT HAS FILED A DULY COMPLETED FORM 59, STATEMENT ON STATUS OF TRADE UNION, CONSTRUCTION INDUSTRY. THE APPLICANT ALSO FILED TWO CERTIFICATES OF MEMBERSHIP. THE CERTIFICATES ARE SIGNED BY THE MEMBERS AND INDICATE THAT MONTHLY DUES OF \$3.00 HAVE BEEN PAID FOR AT LEAST ONE MONTH WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE CERTIFICATES ARE CHECKED AND CERTIFIED CORRECT BY AN OFFICER OF THE APPLICANT. THE APPLICANT ALSO FILED TWENTY COMBINATION APPLICATIONS FOR MEMBERSHIP. THE COMBINATION APPLICATIONS FOR MEMBERSHIP ARE SIGNED BY THE EMPLOYEES AND SEVENTEEN OF THE COMBINATION APPLICATIONS INDICATE THAT A PAYMENT OF AT LEAST \$1.00 HAS BEEN MADE WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE MONEY WAS COLLECTED BY MORE THAN ONE PERSON. THE APPLICANT FILED A DULY COMPLETED FORM 60, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS CONSTRUCTION INDUSTRY.

2. THE RESPONDENT FILED A REPLY, A LIST OF EMPLOYEES CONTAINING THIRTY-FIVE NAMES AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

3. NO STATEMENT OF OBJECTION AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 41 OF THE BOARD'S RULES OF PROCEDURE AND SUBSECTION 9A OF SECTION 75 OF THE LABOUR RELATIONS ACT FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER, DATED JULY 8, 1966, IN THIS MATTER.

4. THE BOARD HAS EXAMINED ALL THE COLLECTIVE AGREEMENTS REFERRED TO BY THE PARTIES. IT HAS BEEN THE PRACTICE OF THE BOARD IN RECENT CASES TO GRANT AN AREA CONSISTING OF THE AREA FORMERLY EMBRACED BY THE COUNTIES OF STORMONT AND GLENGARRY. AFTER CAREFULLY CONSIDERING THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE APPROPRIATE GEOGRAPHIC AREA, WE HAVE COME TO THE CONCLUSION THAT THE AREA CENTERING ON CORNWALL SHOULD INCLUDE AT LEAST THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY. IN THESE CIRCUMSTANCES THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE REPORT OF THE EXAMINER REVEALS THAT Y. CHEROUX SHOULD BE ADDED TO THE LIST AND THAT THE NAME OF E. SEGUIN, NUMBER THIRTY-FOUR ON THE RESPONDENT'S LIST OF EMPLOYEES, SHOULD IN FACT READ C. SEQUIN. THE REPORT FURTHER REVEALS THAT Y. CHEROUX, G. SEGUIN AND A. MACPHERSON WERE NOT AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION, NAMELY, JUNE 13, 1966. THESE THREE PERSONS WOULD NOT BE COUNTED IN ASCERTAINING THE MEMBERSHIP POSITION OF THE APPLICANT UNDER THE PROVISIONS OF SECTION 7 OF THE LABOUR RELATIONS ACT SINCE THEY WERE NOT AT WORK AT THE TIME THE APPLICATION WAS MADE. ASSUMING, BUT WITHOUT DECIDING, THAT MESSRS. PRINCE, MCLEAN AND CROSS ARE LABOURERS AND, THEREFORE, INCLUDED IN THE BARGAINING UNIT, THE TOTAL NUMBER OF PERSONS IN THE UNIT AT THE DATE OF THE MAKING OF THE APPLICATION WAS THIRTY-THREE.

THREE COMBINATION APPLICATIONS FOR MEMBERSHIP FILED BY THE APPLICANT SHOW NO DATE AND NO COLLECTOR AND THE BOARD IS NOT PREPARED TO GIVE WEIGHT TO THESE THREE COMBINATION APPLICATIONS FOR MEMBERSHIP. THE APPLICANT HAS, THEREFORE, FILED EVIDENCE OF MEMBERSHIP FOR NINETEEN PERSONS ALL OF WHOM CORRESPOND TO NAMES ON THE LIST OF THIRTY-THREE REFERRED TO ABOVE. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11917-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. KRALINATOR FILTERS LIMITED (RESPONDENT) V. CANADIAN STEELWORKERS' UNION KRALINATOR DIVISION No. 1, N.C.C.L. (INTERVENER).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT HEARING: EAMON PARK AND EARL CPERSON FOR THE APPLICANT,
NO ONE APPEARING FOR THE RESPONDENT, AND T. V. DOODY FOR THE INTERVENER.

DECISION OF THE BOARD: (JULY 21, 1966).

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT SEEKS TO REPRESENT A BARGAINING UNIT COMPRISING ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. IN A CURRENT APPLICATION THE APPLICANT IS SEEKING TO DISPLACE THE INTERVENER HEREIN AS BARGAINING AGENT FOR A BARGAINING UNIT OF EMPLOYEES OF THE RESPONDENT FROM WHICH THE PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS HAVE BEEN EXCLUDED.

2. THE INTERVENER FILED WITH THE BOARD A MEMORANDUM OF SETTLEMENT MADE ON THE 1ST OF JUNE, 1966, BETWEEN IT AND THE RESPONDENT, FOLLOWING NEGOTIATIONS FOR THE AMENDMENT OF THEIR COLLECTIVE AGREEMENT. THE MEMORANDUM CONTAINS AN AGREEMENT TO EXTEND THE SCOPE OF THE COLLECTIVE AGREEMENT TO INCLUDE THE PART TIME EMPLOYEES WHO ARE THE SUBJECT OF THIS APPLICATION. THE MEMORANDUM WAS INTRODUCED TO SHOW THAT THE INTERVENER HAD BARGAINED FOR THE EMPLOYEES IN THE PART TIME UNIT ALBEIT FOR THE FIRST TIME. SPECIFIC CLAUSES REFER TO THE "TWILIGHT SHIFT" (PERSONS EMPLOYED NO MORE THAN 24 HOURS PER WEEK.)" THE

EMPLOYEES, INCIDENTALLY, REFUSED TO RATIFY THE MEMORANDUM.

3. THE INTERVENER PRODUCED NO MEMBERSHIP EVIDENCE TO ESTABLISH THAT IT REPRESENTED ANYONE IN THE BARGAINING UNIT SOUGHT IN THIS APPLICATION AND REFERRED TO IN THE MEMORANDUM, AND COUNSEL FOR THE INTERVENER ADMITTED THAT NO SUCH EVIDENCE EXISTED. IN THE COMPLETE ABSENCE OF MEMBERSHIP EVIDENCE, THE BOARD CAN ATTRIBUTE NO SIGNIFICANCE TO THE MEMORANDUM AND CANNOT RECOGNIZE THE INTERVENER AS HAVING ANY VALID BASIS FOR ITS INTERVENTION. THE INTERVENTION IS THEREFORE DISMISSED.

4. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

5. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK CONSTITUTE A UNIT OF EMPLOYEES OF OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11926-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. FALCONBRIDGE NICKEL MINES LIMITED (RESPONDENT) v. SUDBURY MINE MILL & SMELTERWORKERS UNION, LOCAL 598, AFFILIATED WITH THE INTERNATIONAL UNION OF MINE MILL & SMELTERWORKERS (INTERVENER).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., D. M. STOREY AND A. DESBIENS FOR THE APPLICANT, J. C. CARSON AND E. R. MATHER FOR THE RESPONDENT, J. NELLIGAN, R. McARTHUR, J. KEUHL AND W. KENNEDY FOR THE INTERVENER.

DECISION OF THE BOARD: (JULY 27, 1966).

1. BY REGISTERED LETTER DATED JULY 5TH, 1966, COUNSEL FOR THE APPLICANT REQUESTED THAT THE BOARD TRANSFER TO THE INSTANT APPLICATION THE DOCUMENTARY EVIDENCE OF MEMBERSHIP FILED IN A PREVIOUS APPLICATION FOR CERTIFICATION (BOARD FILE NO. 10770-65-R) FOR 237 NAMED PERSONS. BY LETTER DATED JULY 6TH, 1966, THE REGISTRAR INFORMED COUNSEL THAT PURSUANT TO HIS REQUEST, THE BOARD HAD TRANSFERRED THE EVIDENCE OF MEMBERSHIP SUBMITTED IN THE PREVIOUS APPLICATION FOR 236 OF THE NAMED PERSONS. THE REGISTRAR POINTED OUT, HOWEVER, THAT THE BOARD WAS NOT IN POSSESSION OF ANY EVIDENCE OF MEMBERSHIP FOR ONE OF THE NAMES PERSONS.

2. AT THE HEARING OF THIS APPLICATION ON JULY 25TH, 1966 COUNSEL ASSERTED THAT EVIDENCE OF MEMBERSHIP HAD BEEN SUBMITTED BY THE APPLICANT IN THE PREVIOUS APPLICATION FOR THE ONE PERSON IN QUESTION.

3. THE BOARD HAS THOROUGHLY REVIEWED ALL OF THE EVIDENCE OF MEMBERSHIP FILED IN BOARD FILE NO. 10770-65-R AND CAN FIND NO EVIDENCE OF MEMBERSHIP FOR THE PERSON CONCERNED. FURTHER THE NAME OF THAT PERSON DOES NOT APPEAR ON ANY OF THE SCHEDULES FILED BY THE RESPONDENT IN THE PREVIOUS APPLICATION AND THE PERSON'S NAME IS NOT RECORDED AS A "LOST" MEMBERSHIP CARD IN THAT FILE. FINALLY, THE NUMBER OF MEMBERSHIP CARDS ON FILE WITH THE BOARD IN THE PREVIOUS APPLICATION CORRESPONDS BOTH WITH THE NUMBER SHOWN ON THE COUNT SHEET AS HAVING BEEN FILED AND WITH THE NUMBER SHOWN ON THE FORM 9 FILED IN THAT APPLICATION. IN THESE CIRCUMSTANCES THE BOARD CAN ONLY CONCLUDE THAT NO EVIDENCE OF MEMBERSHIP WAS FILED BY THE APPLICANT FOR THE PERSON CONCERNED.

4. WE WOULD MENTION THAT, IN ANY EVENT, THE NAME OF THE PERSON IN QUESTION DOES NOT APPEAR ON EITHER SCHEDULE "A" OR SCHEDULE "D" FILED BY THE RESPONDENT IN THE INSTANT APPLICATION. ACCORDINGLY, ANY EVIDENCE OF MEMBERSHIP FILED FOR THE NAMES PERSON WOULD BE "LOST" IN THIS APPLICATION.

11926-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. FALCONBRIDGE NICKEL MINES LIMITED (RESPONDENT) V. SUDBURY MINE MILL & SMELTERWORKERS UNION, LOCAL 59 AFFILIATED WITH THE INTERNATIONAL UNION OF MINE MILL & SMELTERWORKERS (INTERVENE

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., D. M. STOREY AND A. DESBIENS FOR THE APPLICANT, J. C. CARSON AND E. R. MATHER FOR THE RESPONDENT, J. NELLIGAN R. McARTHUR, J. KEUHL AND W. KENNEDY FOR THE INTERVENER.

DECISION OF J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER F. W. MURRAY: (JULY 27, 1966).

1. AT THE HEARING OF THIS APPLICATION ON JULY 25TH, 1966, COUNSEL FOR THE APPLICANT INFORMED THE BOARD THAT THE APPLICANT HAS, AT THE PRESENT TIME, AN APPLICATION FOR CERTIFICATION BEFORE THE BOARD FOR A BARGAINING UNIT OF OFFICE EMPLOYEES OF THE RESPONDENT (BOARD FILE NO. 10775-65-R). COUNSEL REQUESTS THAT THE BOARD TRANSFER THE "LOST" EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN THE LATTER APPLICATION TO THE INSTANT APPLICATION.

2. SECTION 50 OF THE BOARD'S RULES OF PROCEDURE PROVIDES THAT EVIDENCE OF MEMBERSHIP IN A TRADE UNION SHALL NOT BE ACCEPTED BY THE BOARD ON AN APPLICATION FOR CERTIFICATION UNLESS THE EVIDENCE IS FILED NOT LATER THAN THE TERMINAL DATE OF THE APPLICATION. THE BOARD HAS ALWAYS REQUIRED STRICT COMPLIANCE WITH THIS RULE. ALSO THE BOARD HAS INTERPRETED THE WORDS "AN APPLICATION FOR CERTIFICATION" AS MEANING EVIDENCE OF MEMBERSHIP FILED IN THE PARTICULAR APPLICATION FOR CERTIFICATION BEFORE IT. (SEE E & M LATHING CASE, O.L.R.B. MONTHLY REPORT, JUNE 1965, P. 209).

3. FURTHER, SECTION 6 OF THE BOARD'S RULES OF PROCEDURE REQUIRE AN APPLICANT IN A CERTIFICATION PROCEEDING TO FILE A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS IN FORM 9 NOT LATER THAN THE SECOND DAY AFTER THE TERMINAL DATE FOR THE APPLICATION. THE EVIDENCE OF MEMBERSHIP WHICH THE APPLICANT IS SEEKING TO TRANSFER IS NOT COVERED BY THE FORM 9 DATED JULY 6TH, 1966, FILED IN THIS

APPLICATION. WE WOULD ADD THAT EVEN IF THE APPLICANT COULD HAVE FILED ANOTHER FORM 9 COVERING THE MEMBERSHIP EVIDENCE IN QUESTION, NON WAS FILED AT THE BOARD HEARING ON JULY 25TH (SEE E & M LATHING CASE (SUPRA)).

4. ACCORDINGLY, FOR THE ABOVE REASONS, THE REQUEST OF COUNSEL FOR THE APPLICANT TO HAVE EVIDENCE OF MEMBERSHIP TRANSFERRED FROM BOARD FILE NO. 10775-65-R TO THE INSTANT APPLICATION IS DENIED.

DECISION OF BOARD MEMBER E. BOYER: (JULY 27, 1966).

I DISSENT.

I WOULD HAVE TRANSFERRED THE EVIDENCE OF MEMBERSHIP AS REQUESTED BY COUNSEL FOR THE APPLICANT ON THE GROUNDS THAT IT WAS ON FILE WITH THE BOARD PRIOR TO THE TERMINAL DATE AND, FURTHER, WAS SUPPORTED BY A FORM 9 IN THE PARTICULAR CASE IN WHICH THE EVIDENCE WAS ORIGINALLY FILED.

11955-66-R: THE METHODS, WAGE RATE AND SENIOR COST TECHNICIANS ASSOCIATION OF ONTARIO, LOCAL 166, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. JAMES HOWDEN AND PARSONS OF CANADA, LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: J. P. LOUGHRAN FOR THE APPLICANT, NO ONE FOR THE RESPONDENT, W. WALKER FOR THE INTERVENER.

DECISION OF THE BOARD: (JULY 27, 1966).

. . .

3. THE APPLICANT IS APPLYING FOR A UNIT OF EMPLOYEES OF THE RESPONDENT CONSISTING OF ALL INSPECTORS EMPLOYED IN ITS INSPECTION DEPARTMENT. THE APPLICANT SUBMITS THAT THE INSPECTORS ARE THE ONLY PLANT EMPLOYEES WHO ARE NOT ALREADY REPRESENTED BY A BARGAINING AGENT. IN OTHER WORDS, THE APPLICANT SUBMITS THAT THE UNIT FOR WHICH IT IS APPLYING IS AN APPROPRIATE TAG-END UNIT.

4. THE RESPONDENT IS A PARTY TO A COLLECTIVE AGREEMENT WITH THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS LOCAL 637 (HEREINAFTER REFERRED TO AS LOCAL 637) WHICH AGREEMENT IS IN EFFECT UNTIL JANUARY 12TH, 1968. BY THE RECOGNITION CLAUSE OF THE AGREEMENT THE RESPONDENT RECOGNIZES LOCAL 637 AS BARGAINING AGENT FOR ALL OF ITS EMPLOYEES IN METROPOLITAN TORONTO WITH THE EXCEPTION OF FOREMEN AND PERSONS ABOVE THAT RANK, OFFICE STAFF AND STATIONARY ENGINEERS. (WE WOULD MENTION THAT THE STATIONARY ENGINEERS ARE COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS EFFECTIVE UNTIL JANUARY 13TH, 1967). THE DESCRIPTION OF THE BARGAINING UNIT CONTAINED IN THE RECOGNITION CLAUSE ON ITS FACE APPEARS TO COVER THE EMPLOYEES SOUGHT BY THE APPLICANT. LOCAL 637, HOWEVER, HAS ADVISED THE BOARD THAT THE

INSPECTORS CONCERNED, IN FACT, ARE NOT COVERED BY THE COLLECTIVE AGREEMENT WITH THE RESPONDENT AND THAT LOCAL 637 DOES NOT CLAIM TO HOLD THE BARGAINING RIGHTS FOR THEM.

5. IN THESE CIRCUMSTANCES, THE BOARD FINDS THAT ALL INSPECTORS IN THE EMPLOY OF THE RESPONDENT IN ITS INSPECTION DEPARTMENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT CHIEF INSPECTOR AND PERSONS ABOVE THE RANK OF CHIEF INSPECTOR, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11983-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. NORTHERN CONSTRUCTION COMPANY & J. W. STEWART LIMITED (RESPONDENT).

11984-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 607 (APPLICANT) v. NORTHERN CONSTRUCTION COMPANY & J. W. STEWART LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: H. ROONEY AND J. FLOOK FOR THE APPLICANT,
W. H. MAUNSELL FOR THE RESPONDENT.

DECISION OF THE BOARD: (JULY 20, 1966).

5. THE BOARD WAS INFORMED AT THE HEARING IN THIS MATTER THAT SINCE THE DATE OF THE MAKING OF THE APPLICATION THE RESPONDENT HAS HIRED ADDITIONAL EMPLOYEES AND ANTICIPATES THAT WITHIN A SHORT PERIOD IT WILL HIRE A FURTHER SUBSTANTIAL NUMBER OF EMPLOYEES, ALL OF WHOM FALL OR WILL FALL WITHIN THE SCOPE OF THE BARGAINING UNIT. THE RESPONDENT SUBMITS THAT IN THESE CIRCUMSTANCES THE BOARD SHOULD DIRECT THE TAKING OF A REPRESENTATION VOTE AT SUCH TIME AS THE "BUILD-UP" OF EMPLOYEES IN THE BARGAINING UNIT HAS BEEN COMPLETED SO THAT THE TRUE WISHES OF THE MAJORITY OF THE EMPLOYEES MAY ACCURATELY BE DETERMINED.

6. UNDER THE PROVISIONS OF SECTION 92(2) OF THE LABOUR RELATIONS ACT THE BOARD NEED NOT HAVE REGARD TO ANY INCREASE IN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AFTER THE APPLICATION IS MADE. AS A GENERAL RULE, IT IS NOT THE POLICY OF THE BOARD TO CONSIDER "BUILD-UP" WHERE THE APPLICATION IS FOR A CRAFT GROUP (SEE MANNIX Co. LTD. CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1965, P. 526). IN LIGHT OF THE FACT THAT THIS IS AN APPLICATION FOR A CRAFT GROUP, AND HAVING PARTICULAR REGARD TO THE EVIDENCE THAT THE RESPONDENT IS ENGAGED IN THE PERFORMANCE OF A CONTRACT OF SHORT DURATION WHICH IT EXPECTS TO COMPLETE BY NOVEMBER OF THIS YEAR, THE BOARD IS OF THE OPINION THAT IT SHOULD NOT DEPART FROM ITS USUAL POLICY IN THE CIRCUMSTANCES OF THE INSTANT CASE.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

INDEXED ENDORSEMENT - STRIKE UNLAWFUL

11951-66-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) v. CHARLES DUNCAN, AND TORONTO AND DISTRICT COUNCIL OF CARPENTERS AND MILLMEN, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENTS).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: B. W. BINNING, D. STEVENS AND R. PIGOTT FOR THE
APPLICANT, L. A. MACLEAN FOR THE RESPONDENTS.

DECISION OF THE BOARD: (JULY 8, 1966).

1. THIS IS AN APPLICATION PURSUANT TO SECTION 67 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENTS CALLED OR AUTHORIZED AN UNLAWFUL STRIKE OF EMPLOYEES OF THE APPLICANT.
2. AT THE HEARING OF THE APPLICATION ON JULY 5TH, 1966, COUNSEL FOR THE RESPONDENTS MADE A PRELIMINARY OBJECTION TO THE NAMING OF CHARLES DUNCAN AS A RESPONDENT. IT IS COMMON GROUND BETWEEN THE PARTIES THAT DUNCAN IS A BUSINESS REPRESENTATIVE OF THE OTHER RESPONDENT, THE TORONTO AND DISTRICT COUNCIL OF CARPENTERS AND MILLMEN, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA. THE BASIS OF THE OBJECTION OF COUNSEL WAS THAT SECTION 67 OF THE ACT ONLY PROVIDES FOR THE MAKING OF A DECLARATION BY THE BOARD WHEN A STRIKE IS CALLED OR AUTHORIZED BY A TRADE UNION OR A COUNCIL OF TRADE UNIONS. COUNSEL FOR THE APPLICANT ARGUED THAT THERE IS IMPLIED AUTHORITY IN SECTION 67 TO MAKE A DECLARATION AGAINST AN OFFICER, OFFICIAL OR AGENT OF A TRADE UNION. THE BOARD CONSIDERED THE REPRESENTATIONS OF COUNSEL AND FOR REASONS GIVEN ORALLY AT THE HEARING FOUND THAT IT WAS WITHOUT JURISDICTION TO MAKE THE DECLARATION SOUGHT BY THE APPLICANT WITH RESPECT TO CHARLES DUNCAN. THE BOARD, ACCORDINGLY, DISMISSED THE APPLICATION AS IT RELATED TO THE RESPONDENT CHARLES DUNCAN. THE BOARD THEREUPON PROCEEDED WITH THE HEARING OF THE APPLICATION AGAINST THE REMAINING RESPONDENT.
3. ON THE EVIDENCE THE BOARD FINDS THAT AT APPROXIMATELY 8:00 A.M. ON JUNE 27TH, 1966, SOME FIFTY OR SIXTY CARPENTERS IN THE EMPLOY OF THE APPLICANT AT THE PROVINCE OF ONTARIO SCIENCE AND TECHNOLOGY CENTRE LOCATED AT THE INTERSECTION OF DON MILLS ROAD AND EGLINTON AVENUE IN THE CITY OF TORONTO WENT ON STRIKE AND THAT AS OF THE DATE OF THE BOARD HEARING NONE OF THE CARPENTERS HAD RETURNED TO WORK AT THE PROJECT. IN LIGHT OF THE EVIDENCE RELATING TO THE ROLE PLAYED BY CHARLES DUNCAN AND HAVING REGARD TO THE VICARIOUS RESPONSIBILITY PROVISIONS OF SECTION 72(2) OF THE ACT, THE BOARD FURTHER FINDS THAT THE RESPONDENT CALLED OR AUTHORIZED THE STRIKE COMMENCING ON JUNE 22ND, 1966. THE REMAINING ISSUE FOR DETERMINATION BY THE BOARD IS WHETHER OR NOT THE STRIKE CALLED BY THE RESPONDENT IS UNLAWFUL.
4. THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (HEREINAFTER REFERRED TO AS THE ASSOCIATION) AND THE RESPONDENT ON BEHALF OF SIX OF ITS LOCALS, ENTERED INTO A COLLECTIVE AGREEMENT (HEREINAFTER REFERRED TO AS THE ASSOCIATION AGREEMENT) WHICH COVERS ALL JOURNEYMEN CARPENTERS AND APPRENTICES WITHIN A TWENTY-FIVE MILE RADIUS OF TORONTO CITY HALL. THE DURATION CLAUSE PROVIDES THAT THE AGREEMENT IS EFFECTIVE FROM JULY 25TH, 1963 TO APRIL 30TH, 1965 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. AT THE TIME THE AGREEMENT WAS ENTERED INTO BY THE PARTIES, THE APPLICANT WAS A MEMBER OF THE ASSOCIATION AND WAS BOUND BY THE AGREEMENT.
5. THE APPLICANT, SIX INTERNATIONAL TRADE UNIONS AND A PROVINCIAL COUNCIL OF CONSTRUCTION UNIONS, COMPOSED OF THE SIX INTERNATIONAL UNIONS, ENTERED INTO A COLLECTIVE AGREEMENT (HEREINAFTER REFERRED TO AS THE PROVINCIAL COUNCIL AGREEMENT).

THE AGREEMENT PURPORTS TO COVER ALL OF THE EMPLOYEES OF THE APPLICANT WHO ARE EMPLOYED ON CONSTRUCTION SITES IN ONTARIO. THE DURATION CLAUSE PROVIDES THAT THE AGREEMENT IS EFFECTIVE FROM SEPTEMBER 18TH, 1963 TO OCTOBER 31ST, 1965 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. THE AGREEMENT ALSO PURPORTS TO BE BINDING ON NAMED LOCALS OF THE INTERNATIONAL UNIONS INCLUDING THE RESPONDENT. THE AGREEMENT FURTHER PURPORTS TO INCORPORATE LOCAL AREA COLLECTIVE AGREEMENTS WHICH WOULD INCLUDE THE ASSOCIATION AGREEMENT.

6. IN JANUARY OF 1964 THE APPLICANT WAS SUSPENDED FROM MEMBERSHIP IN THE ASSOCIATION.

7. A LETTER OF INTENT DATED JULY 27TH, 1965 SIGNED BY THE DIRECTOR OF INDUSTRIAL RELATIONS OF THE APPLICANT, TOGETHER WITH AN ATTACHED UNDATED AND UNSIGNED MEMORANDUM OF UNDERSTANDING TO WHICH THE APPLICANT AND THE RESPONDENT ARE SHOWN AS PARTIES, WERE FILED AS AN EXHIBIT BY THE RESPONDENT. THE LETTER OF INTENT INDICATES THAT THE RESPONDENT HAD CALLED A STRIKE OF EMPLOYEES OF THE APPLICANT AND THAT THE STRIKE WAS STILL IN PROGRESS AS OF THE DATE OF ITS EXECUTION. THE LETTER PURPORTS TO SET OUT THE BASIS FOR AN INTERIM SETTLEMENT OF THE STRIKE. WE NOTE THAT BY A RECITAL CONTAINED IN THE LETTER, THE APPLICANT RECOGNIZES THAT NO COLLECTIVE AGREEMENT EXISTS BETWEEN ITSELF AND THE RESPONDENT. IN ADDITION THE LETTER CONTAINS AN ADMISSION BY THE APPLICANT THAT THE STRIKE ACTION OF THE RESPONDENT WAS LAWFUL. THE TERMS OF SETTLEMENT SET OUT IN THE LETTER PURPORT TO INCORPORATE THE PROVISIONS OF THE ATTACHED MEMORANDUM OF UNDERSTANDING. WE WOULD MENTION THAT PARAGRAPH 6 OF THE MEMORANDUM PROVIDES THAT UPON THE SIGNING OF A COLLECTIVE AGREEMENT BETWEEN THE ASSOCIATION AND THE RESPONDENT THE APPLICANT AND THE RESPONDENT AGREE TO OBSERVE AND ABIDE BY THE TERMS AND CONDITIONS OF THAT AGREEMENT.

8. EVIDENCE WAS ADDUCED AT THE BOARD HEARING THAT SOMETIME SUBSEQUENT TO THE SIGNING OF THE LETTER OF INTENT ON JULY 27TH, 1965, A NEW COLLECTIVE AGREEMENT WAS ENTERED INTO BY THE ASSOCIATION AND THE RESPONDENT WITH AN EXPIRY DATE IN 1970. THE EVIDENCE IS THAT THIS AGREEMENT WAS IN EFFECT WHEN THE STRIKE CALLED BY THE RESPONDENT COMMENCED ON JUNE 27TH, 1966.

9. COUNSEL FOR THE APPLICANT MADE THE FOLLOWING ALTERNATIVE SUBMISSIONS:

- (1) THE LETTER OF INTENT TOGETHER WITH THE ATTACHED MEMORANDUM OF UNDERSTANDING, WHICH BY PARAGRAPH 6 INCORPORATES THE CURRENT COLLECTIVE AGREEMENT IN EXISTENCE BETWEEN THE ASSOCIATION AND THE RESPONDENT, CONSTITUTES A COLLECTIVE AGREEMENT. DESPITE THE ABSENCE OF SIGNATURES IN THE MEMORANDUM, THE SIGNATURE OF A REPRESENTATIVE OF THE APPLICANT ON THE ATTACHED LETTER OF INTENT VALIDATES THE TWO DOCUMENTS, AS THEY WERE DELIVERED TO THE RESPONDENT.
- (2) SINCE THERE IS NO EVIDENCE THAT EITHER THE APPLICANT OR THE ASSOCIATION NOTIFIED THE RESPONDENT THAT THE APPLICANT HAD CEASED TO BE A MEMBER OF THE ASSOCIATION IN JANUARY OF 1964, BY VIRTUE OF SECTION 38(2) OF THE ACT, THE APPLICANT IS A PARTY TO AND IS BOUND BY THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE ASSOCIATION AND THE RESPONDENT.

- (3) ASSUMING THAT THE PROVINCIAL COUNCIL AGREEMENT SUPERCEDED THE ASSOCIATION AGREEMENT, THE EVIDENCE IS THAT NO NOTICE WAS GIVEN BY ANY PARTY FOR EITHER THE TERMINATION OR RENEWAL OF THE PROVINCIAL COUNCIL AGREEMENT WITHIN THE TIME SPECIFIED IN THE DURATION CLAUSE. THE AGREEMENT THEREFORE CONTINUES IN EFFECT FOR A FURTHER YEAR FROM OCTOBER 31ST, 1965.

COUNSEL ARGUES THAT BY REASON OF ONE OR OTHER OF HIS SUBMISSIONS, A COLLECTIVE AGREEMENT WAS IN EFFECT BETWEEN THE APPLICANT AND THE RESPONDENT ON JUNE 27TH, 1966, THE DATE OF THE COMMENCEMENT OF THE STRIKE CALLED BY THE RESPONDENT. COUNSEL THEREFORE MAINTAINS THAT THE STRIKE IS UNLAWFUL.

10. COUNSEL FOR THE RESPONDENT MADE THE FOLLOWING SUBMISSIONS:

- (1) SINCE THE MEMORANDUM OF UNDERSTANDING, WHICH PURPORTS TO INCORPORATE ANY COLLECTIVE AGREEMENT ENTERED INTO BY THE ASSOCIATION AND THE RESPONDENT, WAS EXECUTED BY NEITHER THE APPLICANT NOR THE RESPONDENT, IT CANNOT, EVEN WITH THE ATTACHED LETTER OF INTENT, BE HELD TO BE A COLLECTIVE AGREEMENT.
- (2) THE RESPONDENT HAVING COMPLIED WITH THE PROVISIONS OF SECTION 54(2) THE STRIKE ACTION TAKEN AGAINST THE APPLICANT IN THE SUMMER OF 1965 WAS LAWFUL. SINCE THE APPLICANT HAS FAILED TO SATISFY THE ONUS UPON IT TO SHOW THAT THE POSITION OF THE RESPONDENT HAS BEEN CHANGED IN THE INTERVENING PERIOD, THE STRIKE ACTION OF JUNE 27TH, 1966 ALSO IS LAWFUL.
- (3) IN THE PIGOTT CONSTRUCTION COMPANY LIMITED CASE O.L.R.B. MONTHLY REPORT, JULY 1965 P. 294, THE BOARD FOUND THAT THE PROVINCIAL COUNCIL AGREEMENT WAS INVALID. ACCORDINGLY THAT AGREEMENT CAN IN NO WAY MAKE THE CURRENT STRIKE ACTION UNLAWFUL.

11. DEALING WITH THE FIRST SUBMISSIONS OF BOTH THE APPLICANT AND THE RESPONDENT WE SUBSCRIBE TO THE POSITION TAKEN BY COUNSEL FOR THE RESPONDENT THAT THE UNSIGNED MEMORANDUM OF UNDERSTANDING EVEN TAKEN TOGETHER WITH THE ATTACHED LETTER OF INTENT IS NOT A COLLECTIVE AGREEMENT.

12. WITH RESPECT TO THE SECOND SUBMISSION OF THE APPLICANT, IN OUR OPINION, WHETHER THE APPLICANT OR THE ASSOCIATION GAVE NOTICE THAT THE APPLICANT WAS NOT A MEMBER OF THE ASSOCIATION IS NOT MATERIAL. FOR BY THE PROVISIONS OF SECTION 38(2) OF THE ACT, REGARDLESS OF SUCH NOTICE, THE ASSOCIATION IS ONLY DEEMED TO BARGAIN FOR ITS MEMBERS. SINCE THERE IS NO DISPUTE THAT AT THE TIME BARGAINING COMMENCED BETWEEN THE ASSOCIATION AND THE RESPONDENT FOR THE RENEWAL OF THE ASSOCIATION AGREEMENT WHICH EXPIRED ON APRIL 30TH, 1965, THE APPLICANT WAS NOT A MEMBER OF THE ASSOCIATION, THE ASSOCIATION CANNOT BE HELD TO HAVE BARGAINED ON BEHALF OF THE APPLICANT. THE BOARD THEREFORE REJECTS THE SUBMISSION OF THE APPLICANT THAT THE APPLICANT IS A PARTY TO AND BOUND BY THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE ASSOCIATION AND THE RESPONDENT. WE HARDLY NEED SAY THAT

ASSUMING WE HAD ACCEPTED THE SUBMISSION OF COUNSEL THAT THE APPLICANT IS BOUND BY THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE ASSOCIATION AND THE RESPONDENT, THE STRIKE ACTION COMMENCING JUNE 27TH, 1966, UNQUESTIONABLE IS UNLAWFUL.

13. SINCE THE BOARD HAS FOUND THAT THE ASSOCIATION DID NOT BARGAIN FOR THE RENEWAL OF THE ASSOCIATION AGREEMENT ON BEHALF OF THE APPLICANT, IT WAS NECESSARY FOR THE RESPONDENT TO COMPLY WITH THE PROVISIONS OF SECTION 54(2) WITH RESPECT TO THE EMPLOYEES OF THE APPLICANT PRIOR TO TAKING STRIKE ACTION AGAINST THE APPLICANT. BY SECTION 54(2) THE RESPONDENT WAS REQUIRED TO GIVE NOTICE OF ITS DESIRE TO BARGAIN TO THE APPLICANT AND TO COMPLETE THE BARGAINING AND CONCILIATION PROCEDURES PROVIDED UNDER THE ACT. CONTRARY TO THE CONTENTIONS OF THE RESPONDENT IN ITS SECOND SUBMISSION THERE IS NO EVIDENCE THAT THE RESPONDENT DID ANY OF THESE THINGS PRIOR TO TAKING STRIKE ACTION AGAINST THE APPLICANT IN THE SUMMER OF 1965. ACCORDINGLY THE STRIKE ACTION OF A YEAR AGO WAS UNLAWFUL. THERE BEING NO EVIDENCE THAT THE POSITION OF THE RESPONDENT HAS IN ANY WAY CHANGED IN THE INTERVENING PERIOD THE STRIKE ACTION COMMENCING ON JUNE 27TH, 1966, ALSO IS UNLAWFUL. WE MAKE THIS DETERMINATION DESPITE WHAT MIGHT BE INTERPRETED AS AN ADMISSION BY THE APPLICANT IN THE LETTER OF INTENT DATED JULY 27TH, 1965, THAT THE STRIKE ACTION OF THE RESPONDENT AGAINST THE APPLICANT AT THAT TIME WAS LAWFUL. IN OUR VIEW, THE APPLICANT CANNOT BE BOUND BY AN ADMISSION OF LAW WHICH IS INVALID.

14. WITH REGARD TO THE THIRD SUBMISSION OF THE RESPONDENT, WE WOULD POINT OUT THAT IN ITS DECISION IN THE PIGOTT CONSTRUCTION COMPANY LIMITED CASE (SUPRA) ALTHOUGH THE BOARD RAISED A NUMBER OF QUESTIONS RELATING TO THE PROVINCIAL COUNCIL AGREEMENT, IT BASED ITS DECISION ON OTHER CONSIDERATIONS AND MADE NO DETERMINATION AS TO THE VALIDITY OF THE AGREEMENT. IN OUR VIEW, HOWEVER, WHETHER OR NOT THE PROVINCIAL COUNCIL AGREEMENT SUPERVEDED THE ASSOCIATION AGREEMENT CANNOT AFFECT THE DETERMINATION OF THE INSTANT APPLICATION.

15. LET US ASSUME FOR THE PURPOSES OF ARGUMENT THAT THE PROVINCIAL COUNCIL AGREEMENT WAS VALID AND BINDING UPON THE APPLICANT AND THE RESPONDENT. SINCE THE EVIDENCE IS THAT NO NOTICE WAS GIVEN BY ANY OF THE PARTIES, THE AGREEMENT AUTOMATICALLY RENEWED ITSELF FOR ANOTHER YEAR FROM OCTOBER 30TH, 1965. THIS AGREEMENT THEREFORE BEING IN EFFECT WHEN THE CURRENT STRIKE ACTION WAS CALLED BY THE RESPONDENT, THE STRIKE IS CLEARLY UNLAWFUL. EVEN IF WE ASSUME FOR PURPOSES OF ARGUMENT THAT THE AGREEMENT FOR ANY REASON IS INVALID, THE RESULT IS THE SAME. FOR IF THE PROVINCIAL COUNCIL AGREEMENT IS INVALID, THE APPLICANT AND RESPONDENT PURSUANT TO SECTION 38(1) OF THE ACT, WERE BOUND BY A "LIKE AGREEMENT" TO THE ASSOCIATION AGREEMENT FROM THE DATE THE APPLICANT CEASED TO BE A MEMBER OF THE ASSOCIATION IN JANUARY, 1964 UNTIL THE EXPIRY DATE OF THE ASSOCIATION AGREEMENT ON APRIL 30TH, 1965. AS WAS NOTED IN PARAGRAPH 13, THERE IS NO EVIDENCE THAT THE APPLICANT AND RESPONDENT HAVE COMPLIED WITH ANY OF THE PROVISIONS OF SECTION 54(2) SINCE THE EXPIRY OF THE "LIKE AGREEMENT" BETWEEN THEM. WE WOULD ADD THAT IF A SUPPORTABLE ARGUMENT CAN BE MADE THAT THE "LIKE AGREEMENT" BETWEEN THE APPLICANT AND THE RESPONDENT AUTOMATICALLY RENEWED ITSELF ON APRIL 30TH, 1965 FOR THE FOLLOWING YEAR AND EVEN THE YEAR THEREAFTER, ANY STRIKE ACTION DURING THE RENEWAL PERIODS WOULD BE UNLAWFUL. WE THEREFORE FIND THAT THE STRIKE CALLED OR AUTHORIZED BY THE RESPONDENT COMMENCING ON JUNE 27TH, 1966 IS UNLAWFUL.

16. THE BOARD, ACCORDINGLY, PURSUANT TO THE PROVISIONS OF SECTION 67 OF THE LABOUR RELATIONS ACT, DECLARES THAT THE RESPONDENT TORONTO AND DISTRICT COUNCIL OF CARPENTERS AND MILLMEN, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, DID ON AND AFTER JUNE 27TH, 1966 CALL OR AUTHORIZE AN UNLAWFUL STRIKE

ENGAGED IN BY EMPLOYEES OF THE APPLICANT AT ITS CONSTRUCTION PROJECT AT THE PROVINCE OF ONTARIO SCIENCE AND TECHNOLOGY CENTRE IN THE CITY OF TORONTO, CONTRARY TO THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT.

INDEXED ENDORSEMENT - PROSECUTION

11818-66-U: BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 483, SAULT STE. MARIE, ONTARIO (APPLICANT) V. ROSSI'S BAKERY LIMITED, 674 ALBERT STREET WEST, SAULT STE. MARIE, ONTARIO (RESPONDENT).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
H. F. IRWIN AND D. W. FORGIE.

APPEARANCES AT THE HEARING: MORRIS ZIMMERMAN FOR THE APPLICANT,
AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: (JULY 14, 1966).

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE PROSECUTION. THE APPLICANT DOES NOT ALLEGE A BREACH OF ANY PARTICULAR SECTION OF THE LABOUR RELATIONS ACT, BUT SIMPLY STATES THE NATURE OF THE OFFENCE TO BE "COMPANY REFUSES TO SIGN CONTRACT". NO DEMAND FOR PARTICULARS WAS MADE AND, AS NOTED ABOVE, NO ONE APPEARED AT THE HEARING ON BEHALF OF THE RESPONDENT. IT WOULD APPEAR, HOWEVER, THAT IF THE ALLEGED CONDUCT OF THE RESPONDENT CONSTITUTES ANY OFFENCE UNDER THE ACT, IT MUST BE WITH RESPECT TO THE PROVISIONS OF SECTION 12 THEREOF. SECTION 12 READS AS FOLLOWS:-

THE PARTIES SHALL MEET WITHIN FIFTEEN DAYS
FROM THE GIVING OF THE NOTICE OR WITHIN SUCH
FURTHER PERIOD AS THE PARTIES AGREE UPON AND THEY
SHALL BARGAIN IN GOOD FAITH AND MAKE EVERY
REASONABLE EFFORT TO MAKE A COLLECTIVE
AGREEMENT.

2. THE FACTS ARE UNCOMPLICATED. AS THE RESULT OF COLLECTIVE BARGAINING THE APPLICANT AND THE RESPONDENT, WITH THE HELP OF A CONCILIATION OFFICER, SIGNED THE FOLLOWING MEMORANDUM:-

MEMORANDUM OF AGREEMENT.

BETWEEN

ROSSI'S BAKERY LIMITED
SAULT STE. MARIE
(REFERRED TO AS "THE COMPANY").

-AND-

BAKERY AND CONFECTIONERY WORKERS'
INTERNATIONAL UNION OF AMERICA, LOCAL 483
(REFERRED TO AS "THE UNION").

REPRESENTATIVES OF THE COMPANY AND THE UNION
MET TO-DAY IN THE PRESENCE OF J. DEMPSTER
CONCILIATION OFFICER NEGOTIATED, APPROVE AND AGREE
TO RECOMMEND TO THEIR PRINCIPALS THE FOLLOWING
POINTS IN DISPUTE LEADING TO A COLLECTIVE AGREEMENT.

1. THE BASIS OF AGREEMENT SHALL BE THE DOCUMENT PRESENTED BY THE COMPANY TO THE UNION AND THE ATTACHED MEMORANDUM BETWEEN THE UNION AND BLUE BIRD BAKERY LIMITED WITH THE EXCEPTION OF SECTION (J) A1 WHICH SHALL BE AS FOLLOWS.

CLASSIFICATION	EFFECTIVE PAY PERIOD FOLLOWING RATIFICATION	EFFECTIVE 1 YR. LATER
	48 (HRS)	45 (HRS)
	\$	\$
WRAPPING MACHINE OPERATOR	1.95	2.12
DOUGH MIXER	1.95	2.12
SPONGEMAN, OVEN MAN		
MACHINE OPERATOR	1.80	1.96
UTILITY	1.60	1.75
GENERAL HELP	1.35	1.49
FEMALE	1.10	1.23

SIGNED AT SAULT STE. MARIE THIS 10TH DAY OF MARCH 1966.

3. FOLLOWING THE SIGNING OF THE MEMORANDUM, THE UNION SOUGHT TO HAVE AN "OFFICIAL CONTRACT" SIGNED BY THE COMPANY. THE COMPANY REFUSES TO SIGN ANYTHING FURTHER.

4. IF THE MEMORANDUM IS FOUND TO CONSTITUTE A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT, NO BASIS EXISTS UPON WHICH TO SUPPORT A CHARGE OF VIOLATION OF SECTION 12 OF THE LABOUR RELATIONS ACT, AND NOTHING IS TO BE ACHIEVED, BEYOND A CERTAIN TIDINESS, IN EXECUTING A FURTHER DOCUMENT REINGROSSING THE TERMS AND CONDITIONS ALREADY COVERED BY THE MEMORANDUM.

5. THE DOCUMENT PRESENTED BY THE COMPANY, REFERRED TO IN THE MEMORANDUM, IS TYPE-WRITTEN AND CONTAINS THE USUAL KIND OF PROVISIONS RESPECTING TERMS AND CONDITIONS OF EMPLOYMENT AND THE RIGHTS, PRIVILEGES AND DUTIES OF THE EMPLOYER, THE TRADE UNION AND THE EMPLOYEES CONCERNED. IT WAS, IN FACT, THE COMPANY'S PROPOSAL FOR A COLLECTIVE AGREEMENT IN FORM AND CONTENT.

6. THE OTHER DOCUMENT REFERRED TO IN THE ABOVE MEMORANDUM AS "THE ATTACHED MEMORANDUM BETWEEN THE UNION AND THE BLUE BIRD BAKERY LIMITED", IS SIMILAR TO THE ONE QUOTED IN ITS PREAMBLE AND GENERAL FORM. PARAGRAPH 1 OF THE BLUE BIRD MEMORANDUM READS AS FOLLOWS:-

THE BASIS OF THE AGREEMENT SHALL BE THE
DOCUMENT PRESENTED BY THE COMPANY TO THE
UNION WITH THE AMENDMENTS BELOW.

7. FOLLOWING THIS CLAUSE THERE ARE SET OUT A SERIES OF SUB-CLAUSES, EACH HAVING REFERENCE TO ONE OF THE ARTICLES IN THE "DOCUMENT PRESENTED BY THE COMPANY TO THE UNION" AND EACH SETTING OUT AMENDMENTS TO THE ARTICLE TO WHICH IT HAS REFERENCE. WITH CERTAIN EXCEPTIONS, WHICH ARE NOT RELEVANT IN THE PRESENT CONTEXT, THE COMPANY DOCUMENT IS THE SAME IN CONTENT IN THE ROSSI CASE AS IN THE BLUE BIRD CASE. IN EFFECT, THE ONLY MATERIAL DISTINCTION FOR THESE PURPOSES LIES IN THE DIFFERENCE IN THE NAMES OF THE EMPLOYERS CONCERNED. THE RESULT IS THAT THE AMENDMENTS SET OUT IN THE BLUE BIRD MEMORANDUM AND INCORPORATED BY REFERENCE INTO THE ROSSI MEMORANDUM ARE APPLICABLE TO THE ARTICLES IN THE ROSSI COMPANY PROPOSAL WITHOUT ANY DIFFICULTY OR CONFUSION.

8. IN THE OPINION OF THE BOARD, IT IS NOT NECESSARY THAT A COLLECTIVE AGREEMENT CONSIST OF ONE DOCUMENT ONLY. NOTHING IN THE ACT LAYS DOWN EXPLICITLY OR IMPLICITLY THAT THERE CAN BE ONLY ONE DOCUMENT INVOLVED. THE ONLY EXPLICIT FORMAL REQUIREMENT IS THAT THE AGREEMENT BE IN WRITING. IMPLICIT IS THE REQUIREMENT OF SIGNATURES. IT IS QUITE IN ORDER, THEN, FOR PARTIES TO INCORPORATE INTO AN AGREEMENT BY REFERENCE AS MANY DOCUMENTS AS THEY DEEM USEFUL AND NECESSARY, SO THAT MORE MULTIPLICITY OF DOCUMENTS, PROVIDED THEY ARE PROPERLY INCORPORATED, DOES NOT AFFECT THE VALIDITY OF AN AGREEMENT AS A COLLECTIVE AGREEMENT UNDER THE ACT.

9. THE PREAMBLE TO THE MEMORANDUM IN THE ROSSI CASE IS NOT AS WELL DRAWN AS IT MIGHT BE, BUT IT SEEMS CLEAR THAT THE COMMITMENT OF THE PARTIES AT THE TIME OF SIGNING WAS TO RECOMMEND ACCEPTANCE OF ITS TERMS TO THE RESPECTIVE PRINCIPLES AS A COMPLETE AGREEMENT. IN OTHER WORDS, THE MEMORANDUM HAD ONLY TO BE RATIFIED BEFORE BECOMING OPERATIVE. AT A MEETING HELD ON MARCH 13TH, 1966, THE EMPLOYEES OF ROSSI BAKERIES RATIFIED THE AGREEMENT. THE EMPLOYER, THE EVIDENCE ESTABLISHES, HAS PUT THE WAGE RATES AGREED UPON INTO EFFECT AND HAS, AS PROVIDED FOR IN THE AGREEMENT, DEDUCTED FROM THE WAGES OF THOSE OF HIS EMPLOYEES WHO SO DIRECTED HIM THE MONTHLY UNION DUES AND HAS FORWARDED THEM TO THE UNION, WHICH HAS ACCEPTED THEM.

10. IN LIGHT OF THE CIRCUMSTANCES OUTLINED ABOVE, THE BOARD FINDS THAT THE MEMORANDUM OF SETTLEMENT MADE BETWEEN THE APPLICANT AND THE RESPONDENT AND THE DOCUMENTS INCORPORATED THEREIN BY REFERENCE, NAMELY, THE DOCUMENT PRESENTED BY ROSSI'S BAKERY LIMITED TO THE UNION AND THE MEMORANDUM OF SETTLEMENT MADE BETWEEN THE APPLICANT HEREIN AND BLUE BIRD BAKERY LIMITED, CONSTITUTES A VALID AND BINDING COLLECTIVE AGREEMENT BETWEEN ROSSI'S BAKERY LIMITED AND BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 483. THE AGREEMENT RUNS FOR A PERIOD OF TWO YEARS FROM THE PAY PERIOD FOLLOWING RATIFICATION, AS PROVIDED FOR IN ITEM 1 (1) OF THE INCORPORATED BLUE BIRD MEMORANDUM.

11. THE RESPONDENT HAVING COMPLIED WITH THE REQUIREMENTS OF SECTION 12 OF THE LABOUR RELATIONS ACT, LEAVE TO PROSECUTE IS DENIED AND THE APPLICATION IS DISMISSED.

INDEXED ENDORSEMENT - SECTION 33(2)

11860-66-M: NESTLE (CANADA) LTD. (APPLICANT) v. UNITED DAIRY & CREAMERY WORK - LOCAL 488 (RESPONDENT).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: DONALD E. HOUCK FOR THE APPLICANT, AND
NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: (JULY 12, 1966).

1. THIS IS AN APPLICATION FOR RELIEF BROUGHT UNDER SECTION 33(2) OF THE LABOUR RELATIONS ACT.

2. A PROPER CONSIDERATION OF THE CASE REQUIRES A REFERENCE TO THE WHOLE OF SECTION 33 WHICH READS AS FOLLOWS:-

33-(1) EVERY COLLECTIVE AGREEMENT SHALL PROVIDE THAT THERE WILL BE NO STRIKES OR LOCK-OUTS SO LONG AS THE AGREEMENT CONTINUES TO OPERATE.

(2) IF A COLLECTIVE AGREEMENT DOES NOT CONTAIN SUCH A PROVISION AS IS MENTIONED IN SUBSECTION 1, IT MAY BE ADDED TO THE AGREEMENT AT ANY TIME BY THE BOARD UPON THE APPLICATION OF EITHER PARTY.

3. THE BOARD FINDS THAT THE APPLICANT IS A PARTY TO A COLLECTIVE AGREEMENT MADE BETWEEN IT AND THE RESPONDENT, DATED SEPTEMBER 1ST, 1964, AND EXPIRING ON OCTOBER 31ST, 1966, AND THAT THE AGREEMENT DOES NOT CONTAIN SUCH A PROVISION AS IS MENTIONED IN SUBSECTION (1) OF SECTION 33 OF THE LABOUR RELATIONS ACT.

4. HAVING REGARD TO THE FOREGOING, THE SUBMISSIONS OF THE PARTIES AND TO THE PROVISIONS OF SECTION 33(2) OF THE ACT, THE BOARD HEREBY ADDS TO THE COLLECTIVE AGREEMENT, REFERRED TO IN PARAGRAPH 3 HEREOF, THE FOLLOWING ARTICLE TO BE EFFECTIVE FORTHWITH:-

THE COMPANY AGREES THAT THERE WILL BE NO LOCKOUT AND THE UNION AGREES THAT THERE WILL BE NO STRIKE SO LONG AS THIS AGREEMENT CONTINUES TO OPERATE.

INDEXED ENDORSEMENT - SECTION 39(3)

11845-66-M: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204, A.F. OF L., C.I.O., C.L.C., AND BRANTFORD GENERAL HOSPITAL (APPLICANTS) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: GEORGE CHRIS AND HAROLD PEELING FOR BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204, A.F. OF L., C.I.O., C.L.C., D. R. BYERS AND K. G. MUIR FOR BRANTFORD GENERAL HOSPITAL, AND MISS MARY MIKLOS AND MRS. HAZEL BROOKS FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (JULY 7, 1966).

1. THIS IS A JOINT APPLICATION, PURSUANT TO SECTION 39(3) OF THE LABOUR RELATIONS ACT, FOR CONSENT TO THE EARLY TERMINATION OF A COLLECTIVE AGREEMENT. THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES WAS EXECUTED ON DECEMBER 1ST, 1965 BEING THE MOST RECENT IN A SERIES OF AGREEMENTS WHICH HAVE BEEN IN EFFECT BETWEEN THE PARTIES FOR A NUMBER OF YEARS.

2. NOTICE OF THE APPLICATION WAS POSTED ON THE PREMISES OF THE EMPLOYER, AND A NUMBER OF EMPLOYEES OF THE EMPLOYER SIGNED PETITIONS, WHICH WERE SENT TO

TO THE BOARD IN OPPOSITION OF THE APPLICATION. THE OBJECTORS WERE REPRESENTED AT THE HEARING OF THIS MATTER. THE OBJECTIONS WHICH WERE RAISED WENT TO THE ADEQUACY OF THE NOTICES GIVEN BY THE TRADE UNION WITH RESPECT TO A MEETING OF EMPLOYEES CALLED BY THE UNION TO CONSIDER THE PROPOSALS OF THE EMPLOYER AND TO THE NATURE OF THE PROCEEDINGS AT THAT MEETING. IN THE FIRESTONE TIRE & RUBBER Co. LTD. CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, 1949-55 TRANSFER BINDER, ¶17,078, THE BOARD DESCRIBED CERTAIN GROUNDS OF OBJECTION WHICH ARE RELEVANT TO AN APPLICATION OF THIS SORT:

- - - CONSENT MIGHT BE REFUSED IF IT COULD BE SHOWN THAT THE PURPOSE OR EFFECT OF EARLY TERMINATION OF THE AGREEMENT WOULD BE TO DEPRIVE ANOTHER UNION OF A FAIR OPPORTUNITY TO COMPLETE ITS ORGANIZING CAMPAIGN AMONG THE EMPLOYEES BOUND BY THE AGREEMENT WITH A VIEW TO APPLYING FOR CERTIFICATION IN ORDER TO DISPLACE THE ESTABLISHED BARGAINING AGENCY. NOTHING OF THIS SORT CAME TO THE BOARD'S ATTENTION IN THIS CASE.

3. THE OBJECTIONS WHICH HAVE BEEN RAISED IN THE INSTANT CASE DO NOT GO TO THOSE MATTERS WHICH THE BOARD DEEMS IT ADVISABLE TO CONSIDER IN DETERMINING WHETHER TO EXERCISE ITS DISCRETION UNDER SECTION 39 (3) OF THE ACT.

4. THE BOARD CONSENTS TO THE EARLY TERMINATION BY THE PARTIES OF THE COLLECTIVE AGREEMENT, DATED THE 1ST DAY OF DECEMBER, 1965.

INDEXED ENDORSEMENT - SECTION 79(2)

10823-65-M: CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 157 (APPLICANT) v. CITY OF ST. CATHARINES (RESPONDENT).*

BEFORE: J. FINKELMAN, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: L. INGLE AND A. RISELEY FOR THE APPLICANT,
AND G. S. P. FERGUSON, Q.C., R. D. PERKINS AND F. A. BARLEY FOR THE RESPONDENT.

DECISION OF THE BOARD: (JANUARY 20, 1966).

THE APPLICANT HAS MADE AN APPLICATION UNDER SECTION 79(2) OF THE LABOUR RELATIONS ACT FOR A DETERMINATION AS TO WHETHER 17 NAMED PERSONS ARE EMPLOYEES OF THE RESPONDENT CORPORATION WITHIN THE MEANING OF SECTION 1(3) OF THE ACT. THE RESPONDENT CORPORATION OPPOSES THE APPLICATION BECAUSE OF CIRCUMSTANCES THAT PREVAILED AT THE TIME WHEN AN APPLICATION FOR CERTIFICATION WITH RESPECT TO THE EMPLOYEES OF THE CITY HALL STAFF OF THE RESPONDENT CORPORATION WAS BEFORE THE BOARD SOME THREE YEARS AGO.

*THE CASE WAS INADVERTENTLY OMITTED FROM THE JANUARY 1966, MONTHLY REPORT.

THE NATIONAL UNION OF PUBLIC SERVICE EMPLOYEES, THE PREDECESSOR OF THE APPLICANT, HAD FILED AN APPLICATION FOR CERTIFICATION ON MARCH 23, 1962. WE WERE INFORMED AT THE HEARING OF THE INSTANT APPLICATION THAT THE APPLICATION FOR CERTIFICATION HAD BEEN MADE SHORTLY AFTER THE "AMALGAMATION OF THE CITY OF ST. CATHARINES WITH SEVERAL ADJOINING MUNICIPALITIES", THAT THERE WAS AT THE TIME A "KNITTING TOGETHER" OF VARIOUS MUNICIPAL DEPARTMENTS AND OFFICES, AND THAT THERE WAS A CONSIDERABLE DEGREE OF CONFUSION AS TO WHO SHOULD OR SHOULD NOT BE INCLUDED IN THE APPROPRIATE BARGAINING UNIT. ULTIMATELY, THE BOARD SEEMS TO HAVE BEEN PERSUADED BY THE REPRESENTATIONS OF THE PARTIES TO DEFINE A BARGAINING UNIT IN WHAT CAN ONLY BE DESCRIBED AS HIGHLY "UNORTHODOX" TERMS. THE DEFINITION IS AS FOLLOWS: ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES IN THE ASSESSMENT, CLERKS, ENGINEERING, FINANCE, PLANNING AND WELFARE DEPARTMENTS, SAVE AND EXCEPT EMPLOYEES WHO EXERCISE MANAGERIAL FUNCTIONS AND EMPLOYEES EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS, THE SENIOR BUILDING AND PLUMBING INSPECTOR, ONE CONFIDENTIAL SECRETARY EACH TO THE MAYOR, THE ASSESSMENT COMMISSIONER, THE CITY ADMINISTRATOR, THE CITY CLERK, THE CITY ENGINEER, THE FINANCE COMMISSIONER, THE DIRECTOR OF PLANNING AND THE DIRECTOR OF WELFARE, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE TRAINING PROGRAM AND EMPLOYEES PRESENTLY BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 150 OF THE NATIONAL UNION OF PUBLIC SERVICE EMPLOYEES. IN ITS DECISION, THE BOARD MAKES IT CLEAR THAT THIS DEFINITION WAS BASED IN LARGE PART ON THE AGREEMENT OF THE PARTIES THEMSELVES. THE BOARD'S EXPERIENCE OVER MANY YEARS IS THAT THE USE OF THE TERMS OF SECTION 1(3) OF THE ACT IN DELIMITING EXCLUSIONS FROM A BARGAINING UNIT, WITHOUT IDENTIFICATION OF THE POSITIONS SO EXCLUDED, CAN ONLY LEAD TO DISSENSION, AS INDEED IT HAS IN THIS CASE. THE BOARD DOES NOT DEFINE A BARGAINING UNIT IN THE TERMS SET OUT ABOVE EXCEPT WHERE THERE ARE VERY SPECIAL CIRCUMSTANCES SUCH AS UNDOUBTEDLY EXISTED IN THIS CASE. IN ITS DECISION OF AUGUST 1, 1962 IN THAT MATTER, THE BOARD, AFTER DEFINING THE BARGAINING UNIT IN THE TERMS INDICATED, DIRECTED THAT A REPRESENTATION VOTE BE TAKEN AMONG EMPLOYEES IN THE BARGAINING UNIT. DURING THE MEETINGS HELD BETWEEN THE PARTIES TO MAKE ARRANGEMENTS FOR THE VOTE, THE PARTIES AGREED THAT CERTAIN PERSONS WERE INELIGIBLE TO VOTE. WE WERE NOT TOLD AT THE HEARING OF THE INSTANT CASE WHETHER THIS AGREEMENT WAS BASED ON THE CONCLUSION OF THE PARTIES THAT THE PERSONS SO EXCLUDED FELL WITHIN THE "MANAGERIAL" OR "CONFIDENTIAL" EXCLUSIONS OR ON SOME OTHER GROUND. THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE PARTIES WAS "MADE" ON JUNE 30, 1964, AND IS EFFECTIVE FROM JANUARY 1, 1964 FOR A PERIOD OF TWO YEARS. THE SCOPE CLAUSE OF THIS AGREEMENT IS THE SAME AS THE BARGAINING UNIT DEFINED IN THE CERTIFICATE ISSUED BY THE BOARD IN THE CERTIFICATION APPLICATION.

LET US TURN NOW TO AN ANALYSIS OF THE FACTS CONCERNING THE 17 PERSONS WHOSE STATUS THE APPLICANT SEEKS TO HAVE THE BOARD DETERMINE IN THE INSTANT APPLICATION. ONE, GEORGE ANDERSON (CLASSIFIED AS SENIOR BUILDING AND PLUMBING INSPECTOR) OCCUPIES A POSITION THAT WAS EXPRESSLY EXCLUDED BY THE BOARD FROM THE BARGAINING UNIT AND HE STILL OCCUPIES THE SAME POSITION AS HE HELD AT THE TIME OF CERTIFICATION. SIX - LAURA CAMPBELL (CLASSIFIED AS SECRETARY TO THE CITY ENGINEER), AUDREY MILLS (CLASSIFIED AS SECRETARY TO THE DIRECTOR OF PLANNING), CAROLYN BEVILL (CLASSIFIED AS SECRETARY TO THE WELFARE ADMINISTRATOR), RUTH DODMAN (CLASSIFIED AS SECRETARY TO THE COMMISSIONER OF FINANCE), ORMA CROSLY (LISTED BY THE RESPONDENT CORPORATION AS "ORMA CROSBIE" AND CLASSIFIED AS SECRETARY TO THE ASSESSMENT COMMISSIONER), AND DAISY ROBERTSON (CLASSIFIED AS SECRETARY TO THE CITY COMMISSIONER) - ARE PERSONS WHO NOW OCCUPY POSITIONS THAT WERE EXPRESSLY EXCLUDED

THE BOARD FROM THE BARGAINING UNIT. EACH OF THESE SIX PERSONS HAS REPLACED THE PERSON WHO OCCUPIED THE EXCLUDED POSITION AT THE TIME OF THE CERTIFICATION PROCEEDINGS. COUNSEL FOR THE RESPONDENT CORPORATION SUBMITTED, AND COUNSEL FOR THE APPLICANT DID NOT DENY, THAT THE FUNCTIONS OF THE SEVEN PERSONS NAMED ABOVE HAD NOT MATERIALLY CHANGED SINCE 1962. AGAIN, COUNSEL FOR THE RESPONDENT CORPORATION STATED AND COUNSEL FOR THE APPLICANT UNION CONCEDED THAT SEVEN PERSONS - DORIS MCGLADE (CLASSIFIED AS ADMINISTRATIVE ASSISTANT, CITY ENGINEER'S DEPARTMENT), DAVID MANSFIELD (CLASSIFIED AS PURCHASING AGENT), DOUGLAS MCKELVIE (CLASSIFIED AS TAX COLLECTION SUPERVISOR), DONALD KEATING (CLASSIFIED AS CHIEF ASSESSOR), HARLEY JOHNSON (CLASSIFIED AS SUPERVISOR OF LICENSES AND SERVICE), WILLIAM KAY (CLASSIFIED AS ASSISTANT TO CITY CLERK) AND DOROTHY BOWMAN (CLASSIFIED AS OFFICE SUPERVISOR AND EXECUTIVE SECRETARY) - WERE EXCLUDED BY AGREEMENT OF THE PARTIES FROM VOTING IN THE REPRESENTATION VOTE REFERRED TO ABOVE. COUNSEL FOR THE RESPONDENT CORPORATION ALSO STATED AND COUNSEL FOR THE APPLICANT UNION AGAIN CONCEDED THAT THE DUTIES OF THESE PERSONS HAD NOT BEEN MATERIALLY ALTERED SINCE THE DATE OF CERTIFICATION.

COUNSEL FOR THE CORPORATION CONTENDS THAT, IN SO FAR AS THE PERSONS WHOSE POSITIONS ARE EXPRESSLY LISTED IN THE CERTIFICATE AND IN THE AGREEMENT AS BEING EXCLUDED FROM THE BARGAINING UNIT ARE CONCERNED, THE BOARD HAS ALREADY DETERMINED ANY QUESTION WITHIN ITS JURISDICTION THAT COULD ARISE BETWEEN THE PARTIES AT THIS STAGE. HE SUBMITS THAT THE UNION IS ATTEMPTING TO USE SECTION 79(2) AS A DEVICE FOR OBTAINING A REVIEW BY THE BOARD OF ITS PREVIOUS DECISION AS TO THE DEFINITION OF THE APPROPRIATE BARGAINING UNIT. IN SO FAR AS THE SEVEN PERSONS EXCLUDED FROM VOTING ARE CONCERNED, HE SUBMITS THAT THE BOARD SHOULD NOT LEND ITSELF TO A SCHEME WHEREBY AN AGREEMENT OF THE PARTIES AS TO THE ELIGIBILITY OF VOTERS COULD BE CIRCUMVENTED. COUNSEL FOR THE APPLICANT, ON THE OTHER HAND, SUBMITS THAT, ON A LITERAL INTERPRETATION OF SECTION 79(2) OF THE ACT, WHENEVER ONE OF THE PARTIES TO A COLLECTIVE AGREEMENT REQUESTS THE BOARD TO DETERMINE THE STATUS OF ANY PERSON WHOSE STATUS IS PUT IN QUESTION IN DISCUSSIONS BETWEEN THE PARTIES, THE ISSUE CAN BE REFERRED TO THE BOARD AND THE BOARD IS REQUIRED TO DECIDE IT.

IF THE POSITION OF COUNSEL FOR THE APPLICANT IS WELL TAKEN, IT FOLLOWS THAT, AS LONG AS A BARGAINING RELATIONSHIP IS IN EXISTENCE, ALL THAT A UNION OR AN EMPLOYER NEED DO TO ENTITLE EITHER OF THEM TO MAKE AN APPLICATION UNDER SECTION 79(2) OF THE ACT IS TO SAY TO THE OTHER THAT A CERTAIN NAMED PERSON IS OR IS NOT AN EMPLOYEE AND, IF THE OTHER DISAGREES WITH THAT STATEMENT, AN APPLICATION TO THE BOARD IS IN ORDER. WE CANNOT CONCEIVE THAT IT WAS THE INTENTION OF THE LEGISLATURE, IN USING THE WORDS "ANY QUESTION ARISES" IN SECTION 79(2), TO HAVE THE BOARD ENGAGED IN ACADEMIC EXERCISES. IN OUR OPINION, IT MUST HAVE BEEN THE INTENTION OF THE LEGISLATURE THAT THE BOARD'S DECISION UNDER THAT SUBSECTION WOULD SERVE SOME USEFUL PURPOSE CONNECTED IN SOME WAY WITH THE BARGAINING RIGHTS OF THE PARTIES. THUS, FOR EXAMPLE, WHERE A DECISION OF THE BOARD AS TO THE STATUS OF CERTAIN PERSONS WOULD ASSIST THE PARTIES IN THE ADMINISTRATION OF A COLLECTIVE AGREEMENT BETWEEN THEM, AN APPLICATION UNDER SECTION 79(2) WOULD APPEAR TO BE AN APPROPRIATE REMEDY.

IT HAS BEEN ARGUED THAT, WHERE A QUESTION HAS ARISEN UNDER A COLLECTIVE AGREEMENT AS TO WHETHER A CERTAIN PERSON IS OR IS NOT COVERED BY THE SCOPE CLAUSE, THE ISSUE IS ONE THAT MUST BE DETERMINED BY ARBITRATION AND NOT BY THE BOARD UNDER

SECTION 79(2). ON THE OTHER HAND, IT HAD BEEN ARGUED THAT WHERE THERE IS A LIKELIHOOD THAT THE ARBITRATOR, IN THE COURSE OF HIS CONSIDERATION AS TO WHETHER A PERSON IS COVERED BY THE SCOPE CLAUSE, IS FACED WITH THE QUESTION AS TO WHETHER THAT PERSON IS OR IS NOT AN EMPLOYEE WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT, THAT QUESTION MUST BE REFERRED TO THE BOARD BECAUSE "THE OPINION OF THE BOARD" IS A MATERIAL FACTOR IN ANY DETERMINATION AS TO WHETHER A PERSON EXERCISES "MANAGERIAL" OR "CONFIDENTIAL" AUTHORITY WITHIN THE MEANING OF THE ACT. IT IS NOT NECESSARY FOR THE BOARD IN THIS CASE TO EXPRESS ANY CONCLUSIVE VIEWS AS TO WHICH OF THESE ALTERNATIVES REPRESENTS THE PROPER APPROACH TO THE PROBLEM OR WHETHER THERE IS SOME MIDDLE GROUND. IN THE INSTANT CASE, THE PARTIES HAVE EXPRESSLY AGREED IN THE CERTIFICATION PROCEEDINGS BEFORE THE BOARD, AND THE BOARD ACTING UPON THIS AGREEMENT HAS HELD, THAT SEVEN OF THE PERSONS WITH RESPECT TO WHOM THE APPLICANT IS SEEKING A RULING ARE NOT INCLUDED IN THE BARGAINING UNIT. IN ADDITION, THE PARTIES SUBSEQUENTLY WROTE INTO THEIR AGREEMENT A CLAUSE THAT EXPRESSLY EXCLUDED THEM FROM THE SCOPE OF THE BARGAINING UNIT TO WHICH THE AGREEMENT APPLIES. IT IS OBVIOUS THAT NO QUESTION HAS ARISEN IN THE INSTANT CASE AS TO THE EMPLOYMENT STATUS OF THESE SIX PERSONS THAT IN ANY WAY RELATES TO THE ADMINISTRATION OF THE AGREEMENT. THE SITUATION HERE IS NOT UNLIKE THAT WHICH AROSE IN THE CANADIAN CAR. FORT WILLIAM DIVISION, HAWKER SIDDELEY CANADA CASE (BOARD FILE 10386-65-M), WITH RESPECT TO CERTAIN PERSONS CLASSIFIED AS ENGINEERS-IN-TRAINING.

AGAIN, IN A PROPER CASE, A DECISION OF THE BOARD AS TO THE STATUS OF CERTAIN PERSONS MAY BE OF ASSISTANCE TO THE PARTIES IN NEGOTIATING A NEW COLLECTIVE AGREEMENT, I.E., WHERE THE EXTENT OF THE BARGAINING RIGHTS THAT THE UNION HAS AT THAT TIME IS IN ISSUE. THE SECTION OUGHT NOT TO BE USED, HOWEVER, TO ENABLE AN APPLICATION TO PAVE THE WAY FOR WHAT IS IN EFFECT A REQUEST FOR VOLUNTARY RECOGNITION OF A UNION AS BARGAINING AGENT FOR A GROUP OF EMPLOYEES NOT PRESENTLY COVERED BY AN AGREEMENT, I.E., AS A SUBSTITUTE FOR A CERTIFICATION APPLICATION. IN ONE SENSE, A QUESTION MAY BE SAID TO ARISE IN SUCH CIRCUMSTANCES AS TO THE STATUS OF CERTAIN PERSONS BUT, IN OUR OPINION, THAT IS NOT THE SENSE IN WHICH THE PHRASE IS USED IN SECTION 79(2) OF THE ACT. WHAT USEFUL PURPOSE IN FURTHERANCE OF BARGAINING FOR A COLLECTIVE COULD BE SERVED BY A DETERMINATION OF THIS BOARD AS TO THE STATUS OF THE SEVEN PERSONS HERE UNDER CONSIDERATION? THE ONLY PURPOSE THAT READILY COMES TO MIND IS THAT THE UNION MIGHT SEEK TO HAVE THE EMPLOYER AGREE TO WIDEN THE SCOPE OF THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT TO INCLUDE ANY OF THE PERSONS WHOM WE MIGHT FIND TO BE EMPLOYEES. HOWEVER, THE UNION COULD NOT INSIST ON THEIR INCLUSION IN THE AGREEMENT AS A MATTER OF RIGHT. THE UNION IS NOT WITHOUT REMEDY. IT COULD APPLY TO THE BOARD TO BE CERTIFIED AS BARGAINING AGENT ON BEHALF OF SUCH PERSONS AND, ON AN APPLICATION OF THAT NATURE, THE UNION WOULD LEGITIMATELY BE ENTITLED TO A RULING AS TO THEIR STATUS.

HAVING REGARD TO ALL THE FOREGOING CONSIDERATIONS, WE ARE OF OPINION THAT THE APPLICANT IS NOT ENTITLED TO RELIEF UNDER SECTION 79(2) OF THE ACT IN SO FAR AS GEORGE ANDERSON, LAURA CAMPBELL, AUDREY MILLS, CAROLYN BEVAN, RUTH DODMAN, ORMA CROSBIE AND DAISY ROBERTSON ARE CONCERNED.

WE COME NOW TO THE SEVEN PERSONS EXCLUDED FROM VOTING. THEIR POSITION IS IDENTICAL IN ALL MATERIAL RESPECTS WITH THE POSITION OF THE PERSONS WHOSE STATUS WAS IN ISSUE IN THE DAVIS LUMBER CASE, (1959) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, ¶16,148, C.L.S. 76-663, AND, FOR THE REASONS THERE GIVEN, IT IS OUR OPINION THAT THE APPLICANT IS NOT ENTITLED TO RELIEF

UNDER SECTION 79(2) WITH RESPECT TO THESE PERSONS, NAMELY, DORIS McGLADE, DAVID MANSFIELD, DOUGLAS McKELVIE, DONALD KEATING, HARLEY JOHNSON, WILLIAM KAY AND DOROTHY BOWMAN.

THREE OF THE SEVENTEEN PERSONS LISTED IN THE UNION'S APPLICATION REMAIN TO BE DEALT WITH. AS TO TWO OF THEM - CLIVE FOSTER (CLASSIFIED AS TECHNICAL SUPERVISOR, CITY ENGINEER'S DEPARTMENT) AND JAMES MACARA (CLASSIFIED AS PROGRAMMER-SUPERVISOR, FINANCE DEPARTMENT) - WE WERE INFORMED AT THE HEARING THAT THE APPLICANT UNION HAD BEEN ADVISED BY THE RESPONDENT CORPORATION IN MARCH 1963 THAT THERE HAD BEEN CHANGES IN THE DUTIES OF THESE TWO PERSONS, THAT THE RESPONDENT CONSIDERED THEM AS FALLING WITHIN THE EXCLUDED GENERAL CATEGORIES IN THE AGREEMENT AND THAT THEY WERE THEREFORE NO LONGER SUBJECT TO THE UNION SECURITY AND CHECK-OFF PROVISIONS OF THE AGREEMENT. THERE IS NO EVIDENCE TO INDICATE THAT THE UNION EXPRESSLY ACQUIESCED IN THE POSITION TAKEN BY THE RESPONDENT WITH RESPECT TO THESE TWO PERSONS. SINCE THE PARTIES ARE EMBARKING ON THE NEGOTIATION OF A NEW AGREEMENT, THE UNION IS ENTITLED TO HAVE THEIR STATUS ESTABLISHED BY THE BOARD. IN SO FAR AS DAVID FORESTER, CLASSIFIED AS ACCOUNTANT, IS CONCERNED, HE OCCUPIES A POSITION THAT WAS NOT EXPRESSLY MENTIONED AS AN EXCLUDED CATEGORY NOR WAS HIS PREDECESSOR TREATED BY THE PARTIES AS INELIGIBLE TO VOTE. THE UNION IS ENTITLED TO HAVE HIS STATUS ESTABLISHED AS WELL. MR. R. A. WOOLAND, EXAMINER, IS AUTHORIZED TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF CLIVE FOSTER, JAMES MACARA AND DAVID FORESTER.

INDEXED ENDORSEMENT - SECTION 79A

11817-66-M: SIGN AND PICTORIAL PAINTERS, LOCAL 1630 OF THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA (TRADE UNION) v. DAY SIGN COMPANY, LIMITED (EMPLOYER).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: S. L. ROBINS, Q.C., ALBERT ROSS AND JAMES E. CALEY FOR THE TRADE UNION, AND GEO. L. FENWICK AND W. J. SCHEID FOR THE EMPLOYER.

DECISION OF THE BOARD: (JULY 5, 1966).

1. THIS IS A REFERENCE TO THE BOARD BY THE MINISTER OF LABOUR OF THE QUESTION WHETHER THE TRADE UNION AND THE EMPLOYER ARE OR WERE PARTIES TO A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.
2. THE AGREED FACTS ARE AS FOLLOWS: THE TRADE UNION AND THE EMPLOYER EXECUTED A DOCUMENT (EXHIBIT 2), DATED FEBRUARY 17TH, 1964, AND HEADED "AGREEMENT". BY THIS AGREEMENT THE EMPLOYER RECOGNIZES THE TRADE UNION AS SOLE COLLECTIVE BARGAINING AGENT FOR "ITS EMPLOYEES IN THE METROPOLITAN TORONTO PLANTS, OTHER THAN; (I) EMPLOYEES ACTING IN A CONFIDENTIAL CAPACITY OR HAVING AUTHORITY TO EMPLOY, DISCHARGE, OR DISCIPLINE EMPLOYEES. (II) OFFICE AND SALES STAFF." THE AGREEMENT CONTAINS PROVISIONS WITH RESPECT TO HOURS OF WORK, WORKING CONDITIONS, WAGES, HOLIDAYS AND OTHER MATTERS USUALLY FOUND IN A COLLECTIVE AGREEMENT. STRIKES AND LOCKOUTS ARE PROHIBITED. THERE IS A PRO-

VISION FOR A GRIEVANCE PROCEDURE AND FOR ARBITRATION, AND THERE IS A PROVISION RESPECTING UNION MEMBERSHIP AND THE CHECK-OFF OF UNION DUES. THE AGREEMENT PROVIDES THAT IT "SHALL BECOME EFFECTIVE FEBRUARY 14TH, 1964, AND SHALL REMAIN IN EFFECT UNTIL FEBRUARY 14TH, 1965, AND SHALL REMAIN IN EFFECT FOR FURTHER PERIODS OF ONE YEAR UNLESS NOTICE, - - - IS GIVEN BY EITHER PARTY." NOTICE WAS GIVEN IN ACCORDANCE WITH THE TERMS SET OUT IN THE AGREEMENT AND A SECOND AGREEMENT (EXHIBIT 1) WAS EXECUTED BY THE PARTIES, EFFECTIVE FEBRUARY 14TH, 1965 AND TO REMAIN IN EFFECT UNTIL FEBRUARY 14TH, 1966, AND FOR FURTHER PERIODS OF ONE YEAR SUBJECT TO THE GIVING OF NOTICE AS IN THE CASE OF THE PREVIOUS AGREEMENT. DURING THE TERM OF THIS AGREEMENT A DISPUTE WAS TAKEN TO ARBITRATION UNDER THE PROVISIONS OF THE AGREEMENT. NOTICE WAS GIVEN IN ACCORDANCE WITH THE PROVISIONS OF THE AGREEMENT, AND NEGOTIATIONS TO PLACE BETWEEN THE PARTIES. THESE NEGOTIATIONS HAVE NOT LED TO A FURTHER AGREEMENT AND THE TRADE UNION HAS APPLIED TO THE MINISTER FOR THE APPOINTMENT OF A CONCILIATION OFFICER. THE EMPLOYER OBJECTS ON THE FOLLOWING GROUNDS, SET IN ITS LETTER OF MAY 17TH, 1966, TO THE DEPUTY MINISTER OF LABOUR:

THE EMPLOYEES BECAME MEMBERS OF THE UNION ON THE JOINT EFFORT OF THE COMPANY AND THE UNION. A MEETING WAS HELD ON COMPANY PREMISES DURING WORKING HOURS WHEN MANAGEMENT ADVISED THE EMPLOYEES TO JOIN THE ABOVE UNION. THE MANAGEMENT WAS ACTIVE IN HAVING THE EMPLOYEES SIGN TO JOIN THE UNION. THEREFORE THIS AGREEMENT CAN NOT BE TREATED AS A COLLECTIVE AGREEMENT UNDER SECTION 36 OF THE LABOUR RELATIONS ACT.

3. COUNSEL FOR THE TRADE UNION RESTED HIS CASE ON THE FOREGOING FACTS, SUPPORTED BY THE EXHIBITS. IT WAS HIS SUBMISSION THAT THIS SUPPORTED HIS CONTENTION THAT THE TRADE UNION AND THE EMPLOYER ARE OR WERE PARTIES TO A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

4. THE REPRESENTATIVE OF THE EMPLOYER THEN SOUGHT TO ADDUCE EVIDENCE TO SHOW THAT, AT THE TIME THE FIRST AGREEMENT WAS ENTERED INTO, THE EMPLOYER HAD CONTRIBUTED SUPPORT TO THE TRADE UNION IN THE MANNER SET OUT IN THE LETTER TO THE DEPUTY MINISTER ABOVE REFERRED TO. SUCH FACTS, IF PROVED, WOULD ESTABLISH THAT THE EMPLOYER HAD COMMITTED A VIOLATION OF SECTION 48 OF THE ACT, AND, BY VIRTUE OF SECTION 36, THE BOARD WOULD BE REQUIRED TO DEEM THE AGREEMENT, EXHIBIT 2, NOT TO BE A COLLECTIVE AGREEMENT FOR THE PURPOSES OF THE ACT.

5. COUNSEL FOR THE TRADE UNION OBJECTED TO SUCH EVIDENCE BEING HEARD ON THE GROUNDS THAT IT DID NOT NOW LIE IN THE MOUTH OF THE EMPLOYER TO ASSERT ITS OWN UNLAWFUL CONDUCT SO AS TO DESTROY THE AGREEMENTS ON WHICH IT AND THE TRADE UNION HAVE RELIED FOR A PERIOD OF TWO YEARS. THE BOARD UNANIMOUSLY RULED THAT THE EVIDENCE SHOULD NOT BE ADMITTED. IT WAS THE BOARD'S VIEW THAT IT DID NOT LIE IN THE MOUTH OF THE EMPLOYER TO ADDUCE EVIDENCE AS TO ITS OWN WRONG-DOING, IN CIRCUMSTANCES WHERE BOTH IT AND THE OTHER PARTY TO THE AGREEMENT HAVE RELIED UPON THE AGREEMENTS AND TO ALL APPEARANCES TREATED THEM AS COLLECTIVE AGREEMENTS FOR A PERIOD OF TWO YEARS. IT SHOULD BE MADE CLEAR THAT A PARTY WOULD NOT OTHERWISE BE PREVENTED FROM GIVING EVIDENCE AS TO THE CIRCUMSTANCES SURROUNDING THE MAKING OF A COLLECTIVE AGREEMENT OR, IN PARTICULAR, EVIDENCE OF COERCION OR INTIMIDATION. IN THE INSTANT CASE THERE WAS NO ALLEGATION OF THAT SORT. WE

WOULD ALSO DISTINGUISH THE SITUATION WHERE ANY PERSON, FOR EXAMPLE, ANOTHER TRADE UNION OR AN INDIVIDUAL EMPLOYEE, SEEKS TO ADDUCE EVIDENCE OF EVENTS TO WHICH HE WAS NOT A PARTY. IN REFUSING TO HEAR THE PROFFERED EVIDENCE, THE BOARD RELIED ON THE GENERAL RULE AGAINST THE HEARING OF EVIDENCE BY WHICH A PARTY WOULD SEEK TO TAKE ADVANTAGE OF ITS OWN WRONG-DOING.

6. AFTER THE BOARD'S RULING WAS GIVEN, THE REPRESENTATIVE OF THE EMPLOYER THEN SOUGHT TO ADDUCE EVIDENCE OF COERCIVE ACTS WHICH HE STATED HAD BEEN COMMITTED BY THE TRADE UNION AT THE TIME EXHIBIT 2 WAS ENTERED INTO. THERE HAD BEEN, AS ABOVE NOTED, NO ALLEGATION TO THIS EFFECT PRIOR TO THE HEARING. NOR WERE ANY OFFERED BY THE EMPLOYER AT ANY TIME.

7. SECTIONS 47 AND 48 OF THE BOARD'S RULES OF PROCEDURE PROVIDE AS FOLLOWS:-

47. (1) NO PERSON SHALL ADDUCE EVIDENCE AT THE HEARING OF AN APPLICATION OF ANY MATERIAL FACT THAT HAS NOT BEEN INCLUDED IN THE APPLICATION OR IN ANY DOCUMENT FILED UNDER THESE RULES IN RESPECT OF THE APPLICATION, EXCEPT WITH THE CONSENT OF THE BOARD AND UPON SUCH TERMS AND CONDITIONS AS THE BOARD THINKS ADVISABLE.

(2) WHERE A STATEMENT IN AN APPLICATION OR COMPLAINT OR IN ANY DOCUMENT FILED UNDER THESE RULES IN RESPECT OF THE APPLICATION OR COMPLAINT IS SO INDEFINITE OR INCOMPLETE AS TO HAMPER ANY PERSON IN THE PREPARATION OF HIS CASE, THE BOARD MAY, UPON THE REQUEST OF THE PERSON MADE PROMPTLY UPON RECEIPT OF THE APPLICATION, COMPLAINT OR DOCUMENT, DIRECT THAT THE INFORMATION STATED BE MADE SPECIFIC OR COMPLETE AND, IF THE PERSON SO DIRECTED FAILS TO COMPLY WITH THE DIRECTION, THE BOARD MAY STRIKE THE STATEMENT FROM THE APPLICATION, COMPLAINT OR DOCUMENT.

48. (1) WHERE, AT THE HEARING OF AN APPLICATION OTHER THAN AN APPLICATION.

(A) FOR A DECLARATION THAT A STRIKE OR LOCKOUT IS UNLAWFUL; OR

(B) FOR CONSENT TO INSTITUTE A PROSECUTION,

A PERSON INTENDS TO ALLEGE IMPROPER OR IRREGULAR CONDUCT BY ANY PERSON, HE SHALL FILE A NOTICE OF SUCH INTENTION WHICH SHALL CONTAIN A CONCISE STATEMENT OF THE MATERIAL FACTS UPON WHICH HE INTENDS TO RELY IN SUPPORT OF THE ALLEGATION BUT NOT THE EVIDENCE BY WHICH THE MATERIAL FACTS ARE TO BE PROVED.

(2) WHERE, IN THE OPINION OF THE BOARD, A PERSON HAS NOT FILED NOTICE OF INTENTION PROMPTLY UPON

DISCOVERING THE CONDUCT ALLEGED, HE SHALL NOT, WITHOUT THE CONSENT OF THE BOARD UPON SUCH TERMS AND CONDITIONS AS THE BOARD THINKS ADVISABLE, ADDUCE EVIDENCE AT THE HEARING OF THE APPLICATION OF SUCH FACTS.

(3) AN APPLICATION,

(A) FOR A DECLARATION THAT A STRIKE OR LOCKOUT IS UNLAWFUL; OR

(B) FOR CONSENT TO INSTITUTE A PROSECUTION,

SHALL CONTAIN A CONCISE STATEMENT OF THE MATERIAL FACTS UPON WHICH THE APPLICANT INTENDS TO RELY IN SUPPORT OF HIS APPLICATION BUT NOT THE EVIDENCE BY WHICH THE MATERIAL FACTS ARE TO BE PROVED.

(4) THE STATEMENT REFERRED TO IN SUBSECTION 1 AND 3 SHALL INCLUDE,

(A) THE TIME WHEN AND THE PLACE WHERE THE ACTS OR OMISSIONS COMPLAINED OF OCCURRED; AND

(B) THE NAMES OF THE PERSONS WHO ENGAGED IN OR COMMITTED THEM.

NONE OF THESE PROVISIONS WAS IN ANY WAY COMPLIED WITH NOR WAS ANY REASON OFFERED BY THE EMPLOYER FOR ITS FAILURE TO RAISE THIS MATTER PRIOR TO THE HEARING. IT WAS NOT SUGGESTED THAT THE NECESSARY INFORMATION HAD JUST COME TO THE ATTENTION OF THE EMPLOYER. THIS IS NOT THE SORT OF CASE IN WHICH THE BOARD WOULD GRANT LEAVE TO ADDUCE EVIDENCE IN SUPPORT OF ALLEGATIONS SUCH AS THOSE NOW MADE BY THE EMPLOYER. ON THIS POINT REFERENCE MAY BE MADE TO THE FLECK MANUFACTURING CASE, 1962 C.L.L.C. 1046.

8. WE WOULD POINT OUT THAT, EVEN IF THE FIRST AGREEMENT BETWEEN THE PARTIES WERE DEEMED NOT TO BE A COLLECTIVE AGREEMENT, THE PARTIES HAVE ENTERED INTO A SECOND AGREEMENT WITH RESPECT TO WHICH NO ALLEGATIONS OF IMPROPRIETY HAVE BEEN MADE.

9. IT MAY FURTHER BE OBSERVED THAT THIS MATTER IS BEFORE THE BOARD ON A REFERENCE FROM THE MINISTER. THE REFERENCE FROM THE MINISTER CONTAINS, AS AN APPENDIX, REFERENCE TO THE ABOVE NOTED LETTER FROM THE REPRESENTATIVE OF THE EMPLOYER TO THE DEPUTY MINISTER. THERE WERE NO OTHER GROUNDS OF OBJECTION RAISED BY THE EMPLOYER TO THE APPOINTMENT OF A CONCILIATION OFFICER BY THE MINISTER AND IT MAY BE THAT IT WOULD BE IMPROPER FOR THE BOARD TO CONSIDER SUCH MATTERS IN ITS DETERMINATION OF THE QUESTION REFERRED TO IT.

10. FULL OPPORTUNITY TO PRESENT EVIDENCE AND MAKE ARGUMENTS ON THE ISSUE BEFORE THE BOARD WAS GIVEN TO THE PARTIES AT THE HEARING, SUBJECT TO THE RULING SET OUT IN THIS ENDORSEMENT.

11. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER IS "YES".

INDEX ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION

11928-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)
V. JOESUG REALTY LTD. (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (JULY 15, 1966).

1. THE RESPONDENT, BY ITS LETTER DATED JULY 5, 1966, REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF JUNE 30TH, 1966 IN THIS MATTER AND RESCIND THE CERTIFICATION OF THE APPLICANT AS BARGAINING AGENT FOR

ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH⁴ AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

2. IN THE APPLICATION THE APPLICANT PROPOSED A BARGAINING UNIT IN THE FOLLOWING TERMS:

ALL EMPLOYEES OF JOESUG REALTY LTD. EMPLOYED AT OR WORKING OUT OF DISTRICT #8 ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS, AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THE RANK OF NON-WORKING FOREMAN.

BY LETTER RECEIVED BY THE BOARD ON JUNE 28, 1966, THE APPLICANT REQUESTED LEAVE TO AMEND ITS PROPOSED DESCRIPTION OF THE BARGAINING UNIT AS FOLLOWS:

ALL EMPLOYEES OF JOESUG REALTY LTD., EMPLOYED AT OR WORKING OUT OF HALTON COUNTY ETC.

3. THE BOARD SERVED THE RESPONDENT WITH A COPY OF THE APPLICATION, A NOTICE OF THE APPLICATION IN FORM 56 AND AN APPROPRIATE NUMBER OF NOTICES OF APPLICATION IN FORM 57 FOR POSTING, ALL AS REQUIRED BY SECTION 68(1) OF THE BOARD'S RULES OF PROCEDURE. IN ADDITION, AND IN ACCORDANCE WITH ITS USUAL PRACTICE, THE BOARD SERVED THE RESPONDENT WITH REPLY FORM (FORM 61) AND COPIES OF THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

PARAGRAPH 8 OF FORM 56 PROVIDES AS FOLLOWS:

8. IF YOU FAIL TO FILE A REPLY OR THE LIST OF EMPLOYEES AND DOCUMENTS CONTAINING SIGNATURES AS SET OUT ABOVE WITHIN THE TIME FIXED BY PARAGRAPH 5 OF THIS NOTICE OR IF YOUR REPLY IS INCOMPLETE, THE BOARD MAY PROCEED TO DISPOSE OF THE APPLICATION ON THE EVIDENCE AND REPRESENTATIONS BEFORE IT WITHOUT FURTHER NOTICE TO YOU AND WITHOUT A HEARING.

SECTION 70 OF THE BOARD'S RULES OF PROCEDURE PROVIDES AS FOLLOWS:

70. A RESPONDENT SHALL FILE A REPLY IN QUADRUPLICATE IN FORM 61 NOT LATER THAN THE TERMINAL DATE FOR THE APPLICATION AND THE REPLY SHALL BE ACCOMPANIED BY A COPY OF ANY EXISTING OR RECENTLY EXPIRED COLLECTIVE AGREEMENT THAT IS OR WAS RECENTLY BINDING UPON THE RESPONDENT OR THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT CLAIMED BY EITHER THE APPLICANT OR THE RESPONDENT TO BE APPROPRIATE.

4. THE RESPONDENT APPARENTLY CHOSE TO IGNORE THE NOTICE OF APPLICATION AND THE BOARD'S DIRECTIONS WITH RESPECT TO POSTING FORM 57 OR FILING A REPLY, TAKING THE POSITION THAT THE APPLICATION WAS IN ERROR BECAUSE OF THE APPLICANT'S ORIGINAL PROPOSED DESCRIPTION OF THE BARGAINING UNIT. THE RESPONDENT MADE NO EFFORT TO BRING ITS POSITION TO THE ATTENTION OF THE BOARD.

5. THE BOARD BEING UNABLE TO ASCERTAIN WHETHER THE RESPONDENT HAD COMPLIED WITH ITS DIRECTION TO POST FORM 57, AUTHORIZED ONE OF ITS OFFICERS TO ENTER THE RESPONDENT'S PREMISES FOR THE PURPOSE OF POSTING FORM 57, ALL IN ACCORDANCE WITH ITS POWERS UNDER SECTION 77(2)(D) AND (E) OF THE LABOUR RELATIONS ACT. ATTACHED TO THE NOTICES SO POSTED BY THE OFFICER WERE COPIES OF THE APPLICANT'S LETTER, DATED JUNE 27, 1966, REQUESTING AN AMENDMENT TO THE DESCRIPTION OF THE BARGAINING UNIT.

6. ALTHOUGH THE RESPONDENT, ON RECEIPT OF A COPY OF THE LETTER OF JUNE 27, 1966, (FORWARDED TO IT BY THE BOARD), POSTED FORM 57 ITSELF ON JUNE 29, IT MADE NO EFFORT TO FILE A REPLY OR REQUEST AN EXTENSION OF TIME OR IN ANY WAY GET IN TOUCH WITH THE BOARD BY THE TERMINAL DATE SET FOR THE APPLICATION.

7. THE RESPONDENT HAVING FAILED TO FILE A REPLY, A LIST OF EMPLOYEES AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE AND HAVING FAILED TO COMMUNICATE WITH THE BOARD IN ANY WAY, THE BOARD, IN ACCORDANCE WITH ITS USUAL PRACTICE, CONSIDERED THE CASE ON THE DAY FOLLOWING THE TERMINAL DATE AND ISSUED ITS DECISION, DATED JUNE 30, 1966, CERTIFYING THE APPLICANT AS BARGAINING AGENT FOR THE GROUP OF EMPLOYEES. IT SHOULD BE NOTED THAT AS OF THAT DATE THERE WERE NO OBJECTIONS FROM EMPLOYEES FILED WITHIN THE PRESCRIBED TIMES NOR ANY REQUEST FROM EMPLOYEES

FOR ANY EXTENSION OF TIME WITHIN WHICH TO FILE SUCH OBJECTIONS. SINCE JUNE 30, 1966, THERE HAS BEEN NO REQUEST MADE BY EMPLOYEES FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE OBJECTIONS.

8. ALTHOUGH THE RESPONDENT HAS NOW SUBMITTED A STATEMENT ALLEGEDLY SIGNED BY SOME EMPLOYEES STATING THEY DO NOT WISH THE APPLICANT TO REPRESENT THEM, THIS DOCUMENT WAS NOT FILED IN ACCORDANCE WITH THE TIMES PRESCRIBED BY THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. SECTION 77(2)(J) OF THE ACT PROVIDES THAT THE BOARD HAS POWER:

TO DETERMINE THE FORM IN WHICH AND THE TIME AS OF WHICH EVIDENCE OF MEMBERSHIP IN A TRADE UNION OR OF OBJECTION BY EMPLOYEES TO CERTIFICATION OF A TRADE UNION OR OF SIGNIFICATION BY EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION SHALL BE PRESENTED TO THE BOARD ON AN APPLICATION FOR CERTIFICATION OR FOR A DECLARATION TERMINATING BARGAINING RIGHTS, AND TO REFUSE TO ACCEPT ANY EVIDENCE OF MEMBERSHIP OR OBJECTION OR SIGNIFICATION THAT IS NOT PRESENTED IN THE FORM AND AS OF THE TIME SO DETERMINED.

AS WAS NOTED ABOVE EMPLOYEES HAVE NOT REQUESTED AN EXTENSION OF TIME FOR FILING SUCH A DOCUMENT NOR DID THEY IN FACT FILE ANY SUCH DOCUMENT WITH THE BOARD. HOWEVER, THE RESPONDENT NOW ATTEMPTS TO FILE SUCH DOCUMENT. HAVING REGARD TO ITS CONDUCT AS DESCRIBED ABOVE AND PARTICULARLY ITS FAILURE TO POST FORM 57, IT IS NOT NOW OPEN TO THE RESPONDENT TO COMPLAIN THAT THE EMPLOYEES DID NOT HAVE SUFFICIENT TIME TO REGISTER THEIR OBJECTIONS.

9. THE FINAL POINT MADE IN THE RESPONDENT'S LETTER OF JULY 5, 1966 DEALS WITH PERSONNEL IN THE BARGAINING UNIT. UNDER THE PROVISIONS OF SECTION 7 OF THE LABOUR RELATIONS ACT THE BOARD IS TO ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, NAMELY JUNE 22, 1966. THE FACT THAT EMPLOYEES LEFT SUBSEQUENT TO THAT DATE AND THAT OTHERS HAVE BEEN HIRED AFTER THAT DATE CANNOT AFFECT THE SITUATION FOR THE PURPOSES OF SECTION 7, THAT IS, IN ASCERTAINING THE MEMBERSHIP POSITION OF THE APPLICANT. FURTHERMORE, THE FACT THAT EMPLOYEES HAVE BEEN HIRED ON A CASUAL OR TEMPORARY BASIS IS NOT A MATERIAL FACTOR, PARTICULARLY IN A CONSTRUCTION INDUSTRY CASE.

10. HAVING REGARD THEN TO THE ABOVE CONSIDERATIONS, THE RESPONDENT'S REQUEST AS CONTAINED IN ITS LETTER OF JULY 5, 1966 IS DENIED AND THE BOARD'S DECISION OF JUNE 30, 1966 IS HEREBY CONFIRMED.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

THE FOLLOWING EXCERPTS FROM DECISIONS ISSUED IN CONSTRUCTION INDUSTRY CASES ARE REPORTED FOR THE INFORMATION OF THE PUBLIC.

11837-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS -LOCAL 793 (APPLICANT)
V. DEL BROCCO CONTRACTING LIMITED (RESPONDENT).

6. IT IS NOT THE PRACTICE OF THE BOARD TO JOIN TOGETHER IN ONE CERTIFICATE TWO OR MORE GEOGRAPHIC AREAS. SEE KOSMACK & PRICE LIMITED, O.L.R.B. MONTHLY REPORT, JULY 1965, P. 256 - 257. THE BOARD SEES NO REASON FOR DEPARTING FROM THIS PRACTICE IN THE PRESENT CASE.

ON THE OTHER HAND IT IS NOT UNUSUAL FOR THE BOARD TO ISSUE TWO OR MORE CERTIFICATES AS A RESULT OF ONE APPLICATION. SEE KEYSTONE CONTRACTORS LIMITED, O.L.R.B. MONTHLY REPORT, JUNE 1964, PPS. 109 AND 120.

(JUNE 9, 1966).

11964-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 (APPLICANT) V. CHUBB-MOSLER AND TAYLOR SAFES LTD. (RESPONDENT)

4. THE REASONS ADVANCED BY THE RESPONDENT IN SUPPORT OF ITS REQUEST FOR A HEARING ARE MATTERS WHICH, IN THE OPINION OF THE BOARD, ARE MORE PROPERLY MATTERS FOR COLLECTIVE BARGAINING ONCE A TRADE UNION IS CERTIFIED. THE FACT THAT A PROJECT MAY TERMINATE SHORTLY AFTER A CERTIFICATE IS ISSUED, OR THAT A RESPONDENT HAS AGREED TO SOME INFORMAL ARRANGEMENT WITH AN APPLICANT TRADE UNION ARE NOT MATTERS WHICH IN OUR OPINION REQUIRE A HEARING. REFERENCE IS MADE TO SECTION 75(9A) OF THE LABOUR RELATIONS ACT AND TO THE MOLLENHAUER CONTRACTING COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1966, P. 902.

(JULY 11, 1966).

11979-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. PERRY WILSON CONSTRUCTION LIMITED (RESPONDENT).

6. THE UNIT PROPOSED BY THE APPLICANT IN THIS CASE IS THAT USUALLY GRANTED BY THE BOARD IN AN APPLICATION AFFECTING CARPENTERS. THE RESPONDENT SUBMITS THAT IT IS NOT APPROPRIATE BECAUSE THE SERVICES OF ALL PRESENT EMPLOYEES WILL NO LONGER BE REQUIRED AFTER A PERIOD OF ONE OR TWO WEEKS.

IN THE MOLLENHAUER CONTRACTING COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1966, P. 902, THE BOARD SAID:

"THE FACT THAT THE JOB AFFECTED BY THE APPLICATION MAY BE FINISHED OR MAY BE CLOSE TO TERMINATION AFTER THE FILING OF AN APPLICATION FOR CERTIFICATION IT IS NOT A FACTOR WHICH THIS BOARD TAKES INTO CONSIDERATION IN REACHING A DECISION ON SUCH AN APPLICATION. REFERENCE IS MADE TO THE NADECO LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1964, P. 608. FURTHERMORE THE BOARD IS PROHIBITED BY SECTION 92 (1) OF THE LABOUR RELATIONS ACT FROM CONFINING A BARGAINING UNIT TO A PARTICULAR PROJECT."

HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY (EXCEPTING THEREFROM THE TOWNSHIPS OF NORMANBY, EGREMONT AND PROTO SAVA AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(JULY 13, 1966).

STATISTICAL TABLES FOR JULY 1966

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	JULY 1ST 1966	4 MONTHS OF FISCAL YEAR 1966-67	1965-66
I. CERTIFICATION	67	343	349
II. DECLARATION TERMINATING BARGAINING RIGHTS	1	16	23
III. DECLARATION OF SUCCESSOR STATUS	-	2	5
IV. DECLARATION THAT STRIKE UNLAWFUL	4	9	25
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	-	-
VI. CONSENT TO PROSECUTE	8	41	25
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	14	43	47
VIII. MISCELLANEOUS	<u>5</u>	<u>21</u>	<u>24</u>
TOTAL	<u>99</u>	<u>475</u>	<u>508</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	JULY 1ST 1966	4 MONTHS OF FISCAL YEAR 1966-67	1965-66
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	58	281	466

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY MAJOR TYPES

		NUMBER DISPOSED OF		
		JULY 1ST 1966	4 MONTHS OF FISCAL YR. 1966-67	1965-66
I.	CERTIFICATION	78	328	370
II.	DECLARATION TERMINATING BARGAINING RIGHTS	1	18	21
III.	DECLARATION OF SUCCESSOR STATUS	-	2	9
IV.	DECLARATION THAT STRIKE UNLAWFUL	2	6	21
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	-	-
VI.	CONSENT TO PROSECUTE	6	30	17
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	6	38	48
VIII.	MISCELLANEOUS	<u>6</u>	<u>16</u>	<u>41</u>
	TOTAL	<u>99</u>	<u>438</u>	<u>527</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>JULY 1966</u>	<u>1ST 4 MONTHS 1966-67</u>	<u>FISCAL YR. 1965-66</u>	<u>JULY 1966</u>	<u>1ST 4 MONTHS 1966-67</u>	<u>FISCAL YR. 1965-66</u>
<u>CERTIFICATION</u>						
GRANTED	56	230	276	1758	5141	8002
DISMISSED	11	56	68	557	3522	2736
WITHDRAWN	11	39	26	157	620	2432
TOTAL	<u>78</u>	<u>325</u>	<u>370</u>	<u>2472</u>	<u>9283</u>	<u>13170</u>
<u>TERMINATION OF BARGAINING RIGHTS</u>						
GRANTED	-	11	8	13	393	726
DISMISSED	1	7	11	47	187	232
WITHDRAWN	-	-	2	-	-	73
TOTAL	<u>1</u>	<u>18</u>	<u>21</u>	<u>60</u>	<u>580</u>	<u>1031</u>

THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>JULY</u>	<u>1ST 4 MONTHS OF FISCAL YEAR</u>	
		<u>1966</u>	<u>1966-67</u>	<u>1965-66</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	2	2	6
	DISMISSED	-	-	3
	WITHDRAWN	-	4	12
		<u>-</u>	<u>-</u>	<u>-</u>
	TOTAL	<u>2</u>	<u>6</u>	<u>21</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	-
	WITHDRAWN	-	-	-
		<u>-</u>	<u>-</u>	<u>-</u>
	TOTAL	<u>-</u>	<u>-</u>	<u>-</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	-	3	1
	DISMISSED	1	2	3
	WITHDRAWN	5	25	13
		<u>5</u>	<u>25</u>	<u>13</u>
	TOTAL	<u>6</u>	<u>30</u>	<u>17</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED

OF BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>JULY 1ST</u>	<u>4 MONTHS</u>	<u>FISCAL YEAR</u>
	<u>1966</u>	<u>1966-67</u>	<u>1965-66</u>
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	2	8	9
POST-HEARING VOTE	2	12	12
BALLOTS NOT COUNTED	-	-	-
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	2	3
POST-HEARING VOTE	4	20	11
BALLOTS NOT COUNTED	-	-	2
TOTAL	<u>8</u>	<u>42</u>	<u>37</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF

BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>JULY 1ST</u>	<u>4 MONTHS</u>	<u>FISCAL YEAR</u>
	<u>1966</u>	<u>1966-67</u>	<u>1965-66</u>
*RESPONDENT UNION SUCCESSFUL	1	4	1
RESPONDENT UNION UNSUCCESSFUL	-	9	8
TOTAL	<u>1</u>	<u>13</u>	<u>9</u>

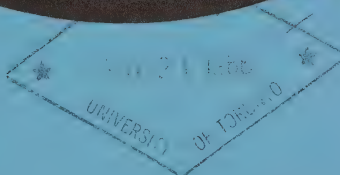
*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

AUGUST, 1966



ONTARIO

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING AUGUST 1966

BARGAINING AGENTS CERTIFIED DURING AUGUST

No VOTE CONDUCTED

11656-66-R: INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA)
(APPLICANT) V. SHERIDAN GEOPHYSICS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MAMAINSE POINT IN THE DISTRICT OF ALGOMA, SAVE AND EXCEPT SHIFT BOSSES, FOREMEN, PERSONS ABOVE THE RANK OF SHIFT BOSS OR FOREMAN, LABORATORY STAFF, EMPLOYEES IN THE ENGINEERING, GEOPHYSICAL AND GEOLOGICAL DEPARTMENTS, CHIEF SAMPLER, AND OFFICE STAFF." (95 EMPLOYEES IN THE UNIT).

11798-66-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS
(APPLICANT) V. KENORA MOTOR PRODUCTS LTD. (RESPONDENT).

UNIT: "ALL GARAGE EMPLOYEES OF THE RESPONDENT AT KENORA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT SERVICE STATION EMPLOYEES OF THE RESPONDENT ARE NOT INCLUDED IN THE BARGAINING UNIT.

11799-66-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS
(APPLICANT) V. W. H. MARR (TWIN CITY) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KENORA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

11800-66-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS
(APPLICANT) V. TRIO MOTORS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KENORA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

11801-66-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS
(APPLICANT) V. KANTOLA MOTORS LIMITED (RESPONDENT).

UNIT #1: "ALL GARAGE EMPLOYEES OF THE RESPONDENT IN KENORA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

UNIT #2: "ALL SERVICE STATION EMPLOYEES OF THE RESPONDENT AT KENORA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).
(DISMISSED).

(AGREEMENT OF THE PARTIES).

11819-66-R: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. THE RENOWN PRINTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA FALLS, SAVE AND EXCEPT FOREMEN ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

11822-66-R: TOBACCO WORKERS INTERNATIONAL UNION AFL-CIO, CLC (APPLICANT) V. H. TOBACCO COMPANY OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, GRADERS, BUYERS, CHIEF ENGINEER, OFFICE STAFF AND SEASONAL EMPLOYEES." (18 EMPLOYEES IN THE UNIT).

11826-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) LLOYD-TRUAX LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINGHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (152 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT HIGHWAY TRUCK DRIVERS INCLUDED IN THE BARGAINING UNIT.

FOR THE PURPOSE OF CLARITY THE BOARD DECLARES THAT PERSONS CLASSIFIED AS FIREMAN AND SECURITY GUARDS ARE NOT SECURITY GUARDS WITHIN THE MEANING OF SECT 9 OF THE LABOUR RELATIONS ACT AND ARE INCLUDED IN THE BARGAINING UNIT.

11848-66-R: LOCAL UNION #636, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC-OFL) (APPLICANT) V. THE CORPORATION OF THE TOWN OF PORT CREDIT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF AND PERSONS COVERED BY ANY SUBSISTING COLLECTIVE AGREEMENT BINDING UPON THE RESPONDENT." (3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER).

11850-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT)
V. LLOYD-TRUAX LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WALKERTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (41 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT HIGHWAY TRUCK DRIVERS ARE INCLUDED IN THE BARGAINING UNIT.

FOR THE PURPOSE OF CLARITY THE BOARD DECLARED THAT PERSONS CLASSIFIED AS FIREMAN AND SECURITY GUARDS ARE NOT SECURITY GUARDS WITHIN THE MEANING OF SECTION 9 OF THE LABOUR RELATIONS ACT AND ARE INCLUDED IN THE BARGAINING UNIT.

11862-66-R: HOTEL & RESTAURANT EMPLOYEES' & BARTENDERS' INTERNATIONAL UNION, LOCAL 197, HAMILTON, ONTARIO (APPLICANT) V. WENTWORTH PUBLIC HOUSE (RESPONDENT).

UNIT: "ALL WAITERS, BARTENDERS AND TAPMEN OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT MANAGERS, OWNERS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11929-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF EDUCATION FOR THE TOWN OF BURLINGTON (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BURLINGTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, TEACHING STAFF, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (61 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 314).

11959-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. THE M.J. POUPORE LUMBER COMPANY LIMITED (RESPONDENT) V. EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE IMPROVEMENT DISTRICT OF ONAPING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (35 EMPLOYEES IN THE UNIT).

11960-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. MARKEL ELECTRIC PRODUCTS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FORT ERIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (40 EMPLOYEES IN THE UNIT).

11963-66-R: LOCAL 280 OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. KAGNER INVESTMENT LIMITED (RESPONDENT).

UNIT: "ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, BARBOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT AT ITS ROYAL OAK HOUSE AT TORONTO, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (6 EMPLOYEES IN THE UNIT).

11981-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. ROMAN CATHOLIC SEPARATE SCHOOL BOARD FOR THE CITY OF SARNIA (RESPONDENT).

UNIT: "ALL JANITORIAL EMPLOYEES IN THE EMPLOY OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (10 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11988-66-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. MOSS PARK MEAT MARKET (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN METROPOLITAN TORONTO, AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

11992-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. THE VALLEY CAMP COAL COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FORT WILLIAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND SECURITY GUARDS." (17 EMPLOYEES IN THE UNIT).

11994-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. FRANCOZ METAL CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ORILLIA SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN OFFICE AND SALES STAFF." (14 EMPLOYEES IN THE UNIT).

12000-66-R: TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION LOCAL NO. 10 (APPLICANT) v. MURRAY PRINTING & GRAVURE LIMITED (RESPONDENT). v. CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENTS BINDING UPON THE RESPONDENT." (24 EMPLOYEES IN THE UNIT).

FOR THE PURPOSE OF CLARITY THE BOARD DECLARED THAT ALL MAINTENANCE MACHINISTS, MAINTENANCE ELECTRICIANS AND MAINTENANCE PLUMBERS AND THEIR HELPERS ARE INCLUDED IN THE BARGAINING UNIT.

12001-66-R: BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, WINDSOR, ONTARIO (AFFILIATED WITH BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO-CLC) (APPLICANT) v. THE CORPORATION OF THE COUNTY OF KENT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS THAMESVIEW LODGE, CHATHAM, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, GRADUATE DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (51 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIO-LOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12003-66-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) v. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WAREHOUSE AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

12008-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. THE WANDER COMPANY OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS ANCA LABORATORIES DIVISION AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND OFFICE AND SALES STAFF." (54 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 319).

12014-66-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. NEW YORK WINDOW CLEANING COMPANY LIMITED (RESPONDENT) v. EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (41 EMPLOYEES IN THE UNIT).

12016-66-R: TEXTILE WORKERS UNION OF AMERICA, CLC-AFL-CIO (APPLICANT) v. CANADIAN SYNTHETIC FIBRES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GALT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, LABORATORY PERSONNEL, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT).

12017-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE TOWN OF DUNDAS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DUNDAS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (27 EMPLOYEES IN THE UNIT).

12023-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DREW BROWN LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STEEL WAREHOUSE AND STEEL FABRICATION PLANT ON TITAN ROAD IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL ORNAMENTAL IRONWORKERS, LOCAL 721, AND THE GENERAL CONTRACTORS SECTION OF THE TORONTO BUILDERS EXCHANGE, AND OFFICE STAFF." (43 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT ITS GENERAL WAREHOUSE AT 50 TITAN ROAD IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT). (DISMISSED).

UNIT #3: "ALL EMPLOYEES OF THE RESPONDENT AT ITS TANK FARM AT 238 CHERRY STREET IN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT). (DISMISSED).

12027-66-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. RED1 STEEL PRODUCTS LIMITED, CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF TORONTO STEEL FABRICATORS (RESPONDENT). V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (52 EMPLOYEES IN THE UNIT).

12028-66-R: HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION LOCAL 197, HAMILTON, ONTARIO (APPLICANT) V. PICTON HOUSE (RESPONDENT).

UNIT: "ALL WAITERS, BARTENDERS AND TAPMEN IN THE EMPLOY OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT OWNERS, MANAGERS AND PERSONS REGULARLY EMPLOYED FOR MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

12033-66-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669 (APPLICANT) V. MARCEL BUREAU, HOUSE BUILDER (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF KAPUSKASING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 321).

12034-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL-CIO-CLC (APPLICANT) V. OTTAWA DOMESTIC PROVISIONERS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (41 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT CANVASSERS AND PUBLIC RELATIONS PERSONNEL ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF, AND THAT SERVICEMEN ARE INCLUDED IN THE BARGAINING UNIT.

12036-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) v. FINKLE CRANE RENTALS LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

12039-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. GREAT LAKES STEEL PRODUCTS LIMITED (RESPONDENT).v. SHOPMEN'S LOCAL UNION No. 757 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFFILIATED WITH THE A.F.L. - C.I.O.,-CLC) (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN SAULT STE. MARIE AND IN THE TOWNSHIP OF PRINCE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME ON OUTSIDE ERECTION PROJECTS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

12040-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. CORPORATION OF THE COUNTY OF GREY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS JAIL, SAVE AND EXCEPT CHIEF TURNKEY, PERSONS ABOVE THE RANK OF CHIEF TURNKEY AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT).

12046-66-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. UNIQUE WINDOW CLEANING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

12047-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. PAUL BRAUN CONSTRUCTION Co. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF KENORA ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (35 EMPLOYEES IN THE UNIT).

12048-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION No. 124 (APPLICANT) v. LAURENTIAN CONCRETE FORMS LIMITED (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

12049-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION (APPLICANT) V. W. A. GRIMES LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL, PRESCOTT, SAGE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY THE BOARD DECLARES THAT LINOLEUM LAYERS, TILE SETTERS, CERAMIC TILE SETTERS AND CARPET LAYERS ARE NOT EMPLOYEES INCLUDED IN THE BARGAINING UNIT.

12055-66-R: UNION OF CANADIAN RETAIL EMPLOYEES (APPLICANT) V. SUPER CITY DISCOUNT FOODS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES AT GALT REGULARLY EMPLOYED NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAGE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (48 EMPLOYEES IN THE UNIT).

12056-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ST. CATHARINES SANITATION SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAGE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (49 EMPLOYEES IN THE UNIT).

12060-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL, 607 (APPLICANT) V. BURNS & DUTTON CONSTRUCTION (1962) LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAGE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

12061-66-R: HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION, LOCAL 197 IN HAMILTON (APPLICANT) V. BRITANNIA PUBLIC HOUSE LIMITED (RESPONDENT).

UNIT: "ALL WAITERS, BARTENDERS AND TAPMEN IN THE EMPLOY OF THE RESPONDENT AT HAMILTON, SAGE AND EXCEPT OWNERS, MANAGERS AND PERSONS REGULARLY EMPLOYED FOR MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

12062-66-R: CANADIAN TRANSPORTATION WORKERS UNION No. 188, NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT) V. LAIDLAW TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF ITS TERMINAL AT LONDON, SAGE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

12074-66-R: BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, WINDSOR, ONTARIO (AFFILIATED WITH BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION A.F.L.-C.I.O., C.L.C.) (APPLICANT) V. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON IN ONTARIO OPERATING ST. JOSEPH'S HOSPITAL, CHATHAM, ONTARIO (RESPONDENT) V.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 944 (INTERVENER).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL IN CHATHAM, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHIEF ENGINEER, OFFICE STAFF, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 944, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (207 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT WARD CLERKS WHO DO NOT PERFORM NURSING CARE IN ANY FORM NOR HAVE DIRECT CONTACT WITH THE PATIENT ARE INCLUDED IN THE TERM "OFFICE STAFF" AND ARE EXCLUDED FROM THE BARGAINING UNIT.

12075-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. N. A. LOFRANCO LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

12076-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. PAUL GIRARD Co. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (17 EMPLOYEES IN THE UNIT).

12084-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) v. BALL BROTHERS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, WITH THE EXCEPTION OF THE TOWNSHIP OF McNAB, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

12085-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) v. FITZPATRICK MASONRY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, WITH THE EXCEPTION OF THE TOWNSHIP OF McNAB, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

12087-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION, 759 (APPLICANT) V. THE CARTER CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

12091-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 (APPLICANT) V. A. G. BAIRD LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMIT OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

12097-66-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA LOCAL UNION 1671 (APPLICANT) V. NU-BRITE FLOORS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, ENGAGED IN THE LAYING OF RESILIENT TILES, LINOLEUM AND CARPETS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12098-66-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION 1671 (APPLICANT) V. T. W. ZEGIL LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, ENGAGED IN THE LAYING OF RESILIENT TILES, LINOLEUM AND CARPETS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

12100-66-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION 1671 (APPLICANT) V. PIERCE FLORCRAFT LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, ENGAGED IN THE LAYING OF RESILIENT TILES, LINOLEUM AND CARPETS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

12101-66-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION 1671 (APPLICANT) V. BRIAN HAYES CARRYING ON BUSINESS AS A & B TILE & CUSTOM FLOORING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, ENGAGED IN THE LAYING OF RESILIENT TILES, LINOLEUM AND CARPETS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12105-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 (APPLICANT) V. SCHOKBETON QUEBEC INC. (RESPONDENT).

UNIT: ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

12106-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 1036 (APPLICANT) V. ARTHUR G. MCKEE & COMPANY OF CANADA LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN SAULT STE. MARIE AND IN THE TOWNSHIP OF PRINCE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT).

12127-66-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION 1904 (APPLICANT) V. "K" BROS. PAINTING (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12129-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081 (APPLICANT) V. RUEBEN WRIGHT, GENERAL CONTRACTOR (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY (EXCEPTING THEREFROM THE TOWNSHIPS OF NORMANBY, EGREMONT AND PROTON), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12130-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (APPLICANT) V. VALLEY CITY MANUFACTURING Co. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

12135-66-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL UNION 46 (APPLICANT) V. SENTINEL HEATING SERVICE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN OIL BURNER SERVICE AND INSTALLATION WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD,

RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT SERVICE MANAGER, PERSONS ABOVE THE RANK OF SERVICE MANAGER AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 322).

12136-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL # 1 (APPLICANT) V. EASTWOOD CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON AND HALDIMAND IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12152-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MEL BERRIAGE LANDSCAPE CONTRACTOR LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, EMPLOYED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

11820-66-R: UNION OF CANADIAN RETAIL EMPLOYEES (APPLICANT) V. LOBLAW GROCETERIES CO., LIMITED (RESPONDENT) V. LOBLAW TRANSPORT ASSOCIATION (INTERVENER #1) V. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AS TRUCK DRIVERS AND HELPERS IN THE TRUCK MAINTENANCE GARAGE AND VEHICLE AREA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS EMPLOYED IN OR ASSOCIATED WITH WHAT IS KNOWN AS SMALL MAINTENANCE TRUCKS AND ANY PERSON COVERED BY ANY SUBSISTING COLLECTIVE AGREEMENT BINDING UPON THE RESPONDENT." (194 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		194
NUMBER OF PERSONS WHO CAST BALLOTS		195
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	174	
NUMBER OF BALLOTS MARKED IN FAVOUR OF LOBLAW TRANSPORT ASSOCIATION	20	

11856-66-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 141 (APPLICANT) v. CANADA BUILDING MATERIALS LIMITED (RESPONDENT) v. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, ON BEHALF OF LOCAL UNION 14454 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS BLOCK PLANT OPERATION AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 944, INTERNATIONAL UNION OF OPERATING ENGINEERS." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	20
NUMBER OF PERSONS WHO CAST BALLOTS	20
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	18
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	2

11858-66-R: UNITED PACKINGHOUSE, FOOD & ALLIED WORKERS AFL: CIO: CLC. (APPLICANT) v. F. W. FEARMAN COMPANY LIMITED (RESPONDENT) v. GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER #1) v. THE CANADIAN UNION OF OPERATING ENGINEERS AND ITS LOCAL 108 (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BURLINGTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS AND ITS LOCAL 108." (186 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	171
NUMBER OF PERSONS WHO CAST BALLOTS	166
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	90
NUMBER OF BALLOTS MARKED IN FAVOUR OF GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA	74

11901-66-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. QUIGLEY CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT AND BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793." (46 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST
NUMBER OF PERSONS WHO CAST BALLOTS
BALLOTS SEGREGATED AND NOT COUNTED
NUMBER OF BALLOTS MARKED IN FAVOUR
OF APPLICANT
NUMBER OF BALLOTS MARKED AGAINST
APPLICANT

40
33
1
21
11

APPLICATIONS FOR CERTIFICATION DISMISSED DURING AUGUST

NO VOTE CONDUCTED

11663-66-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS AFL-CIO
CLC (APPLICANT) V. GENERAL TIME OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES
(OBJECTORS). (52 EMPLOYEES).

11915-66-R: RETAIL STORE EMPLOYEES UNION, LOCAL NO. 832 (APPLICANT) V. DRYDEN
TO \$1.00 STORE LIMITED (RESPONDENT). (27 EMPLOYEES).

11926-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. FALCONBRIDGE NICKEL
MINES LIMITED (RESPONDENT) V. SUDBURY MINE MILL & SMELTERWORKERS UNION, LOCAL 5
AFFILIATED WITH THE INTERNATIONAL UNION OF MINE MILL & SMELTERWORKERS (INTERVENOR)
(2371 EMPLOYEES).

11997-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. PARKE, DAVIS &
COMPANY LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (109 EMPLOYEES).

12069-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (APPLICANT)
V. CANADIAN DREDGE & DOCK COMPANY LIMITED (RESPONDENT). (3 EMPLOYEES).

12093-66-R: INTERNATIONAL UNION OF DISTRICT 50, UMWA (APPLICANT) V. ALLIED
CHEMICAL CANADA LTD. (RESPONDENT) V. TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO
AND ITS LOCAL 1631 (INTERVENOR). (112 EMPLOYEES).

12119-66-R: LOCAL UNION 1824, OF THE BROTHERHOOD OF PAINTERS, DECORATORS AND
PAPERHANGERS OF AMERICA (APPLICANT) V. TWIN CITY PAINTING & DECORATING (RESPONDENT)
(4 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

11916-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. KRALINATOR FILTERS
LIMITED (RESPONDENT) V. CANADIAN STEEL WORKERS' UNION KRALINATOR DIVISION NO. 1
N.C.C.L. (INTERVENOR).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT COMPANY AT PRESTON, SAVE
EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, EMPLOYEES IN THE ENGINEERING
DEPARTMENT, OFFICE STAFF, DISPATCHER, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS
PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(165 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	143
NUMBER OF PERSONS WHO CAST BALLOTS	143
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	66
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	76

(SEE INDEXED ENDORSEMENT PAGE 312).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

11561-65-R: CANADIAN TEXTILE COUNCIL (APPLICANT) V. TEXPACK LIMITED AND SURGITEX LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, PERSONS EMPLOYED EXCLUSIVELY AS WATCHMEN, OFFICE AND SALES STAFF." (41 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	35
NUMBER OF PERSONS WHO CAST BALLOTS	35
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	16
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	18

11624-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. SENTRY DEPARTMENT STORES LIMITED (RESPONDENT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER).

UNIT #1 (FULL-TIME EMPLOYEES)

"ALL EMPLOYEES OF THE RESPONDENT IN SARNIA TOWNSHIP, SAVE AND EXCEPT DEPARTMENT MANAGERS, PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (55 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	52
NUMBER OF PERSONS WHO CAST BALLOTS	52
NUMBER OF SPOILED BALLOTS	25
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	19
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	8

UNIT #2 (PART-TIME EMPLOYEES)

"ALL EMPLOYEES OF THE RESPONDENT IN SARNIA TOWNSHIP REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT DEPARTMENT MANAGERS, PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER AND OFFICE STAFF." (43 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		24
NUMBER OF PERSONS WHO CAST BALLOTS	24	
NUMBER OF SPOILED BALLOTS	7	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	11	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	6	

APPLICATIONS OF APPLICANT AND OF INTERVENER DISMISSED.

11884-66-R: THE OTTAWA NEWSPAPER GUILD, LOCAL 205 OF THE AMERICAN NEWSPAPER GUILD
AFL-CIO-CLC (APPLICANT) V. THE JOURNAL PUBLISHING COMPANY OF OTTAWA, LIMITED
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS BUILDING DEPARTMENT AT OTTAWA, SAVE AND EXCEPT BUILDING SUPERVISOR, PERSONS ABOVE THE RANK OF BUILDING SUPERVISOR AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON		
VOTERS' LIST		10
NUMBER OF PERSONS WHO CAST BALLOTS	10	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	9	

11932-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486
(APPLICANT) V. JOHN CLARK BUILDING ENTERPRISES LIMITED (RESPONDENT) V. GROUP OF
EMPLOYEES (OBJECTORS).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF DYMOND, BUCKE AND COLEMAN AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO IN THE DISTRICT OF TIMISKAMING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (40 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		36
NUMBER OF PERSONS WHO CAST BALLOTS	36	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	8	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	28	

11939-66-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, CLC (APPLICANT) V. DOMINION TIRE STORES (A DIVISION OF DOMINION RUBBER COMPANY LIMITED) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS TIRE SERVICE DEPOTS AT KITCHENER SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES ST. PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED	
VOTERS' LIST	8
NUMBER OF BALLOTS CAST	8
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	7

11940-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. GLAXO-ALLENBURYS (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (29 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PROFESSIONAL PHARMACISTS ARE NOT INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	29
NUMBER OF PERSONS WHO CAST BALLOTS	29
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	8
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	21

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING AUGUST

12043-66-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938, GENERAL TRUCK DRIVERS (APPLICANT) V. SUDBURY WAREHOUSING COMPANY (RESPONDENT). (22 EMPLOYEES).

12088-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. THUNDER BAY HARBOUR IMPROVEMENTS LTD. (RESPONDENT). (5 EMPLOYEES).

12092-66-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669 (APPLICANT) V. PILLAR CONSTRUCTION LIMITED (RESPONDENT). (4 EMPLOYEES).

12099-66-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA. LOCAL UNION 1671 (APPLICANT) V. CHAPPLES LTD. (RESPONDENT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION LOCAL 409 (INTERVENER). (1 EMPLOYEE).

12113-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SILVER TOWN MINES LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS (CANADA) (INTERVENER). (9 EMPLOYEES).

12120-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 1036 (APPLICANT) V. THE AUSTIN COMPANY LIMITED (RESPONDENT). (2 EMPLOYEES).

12142-66-R: RETAIL STORE EMPLOYEES UNION, LOCAL No. 832 (APPLICANT) V. STYLERITE DEPARTMENT STORES LTD. (RESPONDENT). (4 EMPLOYEES).

12143-66-R: RETAIL STORE EMPLOYEES UNION, LOCAL NO. 832 (APPLICANT) V. STYLERIE
DEPARTMENT STORES LTD. (RESPONDENT). (13 EMPLOYEES).

APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING

AUGUST

12019-66-R: CERTAIN EMPLOYEES OF E. C. KING CONTRACTING LIMITED, REPRESENTED BY
ORVILLE SPRUNG (APPLICANT) V. GENERAL TRUCK DRIVERS, LOCAL 879, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, C.L.C. (RESPONDENT).
(67 EMPLOYEES). (GRANTED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING AUGUST

12009-66-U: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS
(APPLICANT) V. CAMPBELL MOTORS (OTTAWA) LTD. (RESPONDENT). (GRANTED).

12052-66-U: CRUMP SHEET METALS LIMITED (APPLICANT) V. EDMOND LARCHE AND GERALD
BOUDREAU (RESPONDENTS). (WITHDRAWN).

12052-66-U: CRUMP SHEET METALS LIMITED (APPLICANT) V. EDMOND LARCHE AND GERALD
BOUDREAU (RESPONDENTS). (WITHDRAWN).

12134-66-U: RETAIL STORE EMPLOYEES UNION, LOCAL NO. 832 (APPLICANT) V. STYLERIE
DEPARTMENT STORE LIMITED, OPERATING UNDER THE TRADE NAME OF PROUDFOOT'S (DRYDEN,
DEPARTMENT STORE IN THE TOWN OF DRYDEN, ONTARIO (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING AUGUST

11887-66-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. BELL CITY FOUNDRY (BRANTFORD
LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 323).

11888-66-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. BELL CITY FOUNDRY (BRANTFORD
LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 326).

11890-66-U: HOTEL & RESTAURANT EMPLOYEES' & BARTENDERS INTERNATIONAL UNION, LOCAL
197, HAMILTON, ONTARIO (COMPLAINANT) V. WENTWORTH HOUSE, 365 WENTWORTH ST. NORTH
HAMILTON, ONTARIO (RESPONDENT).

11945-66-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. SAUGEEN VENEER
LIMITED (RESPONDENT).

11970-66-U: RAYMOND LOYER (COMPLAINANT) V. NATCHO NANEFF, CARRYING ON BUSINESS
KALLA MANUFACTURING & HAULAGE COMPANY (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 329).

11971-66-U: ROMEO ROUSSEAU (COMPLAINANT) V. NATCHO NANEFF, CARRYING ON BUSINESS AS KALLA MANUFACTURING & HAULAGE COMPANY (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 331).

11972-66-U: JOHN VILLENEUVE (COMPLAINANT) V. NATCHO NANEFF, CARRYING ON BUSINESS AS KALLA MANUFACTURING & HAULAGE COMPANY (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 333).

11999-66-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. MARKEL ELECTRIC PRODUCTS LTD. (RESPONDENT).

12004-66-U: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. CAMPBELL MOTORS (OTTAWA) LTD. (RESPONDENT).

12005-66-U: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. CAMPBELL MOTORS (OTTAWA) LTD. (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 335).

12006-66-U: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. CAMPBELL MOTORS (OTTAWA) LTD. (RESPONDENT).

12024-66-U: TEXTILE WORKERS UNION OF AMERICA, CLC-AFL-CIO (COMPLAINANT) V. CANADIAN SYNTHETIC FIBRES LTD. (RESPONDENT).

12031-66-U: FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA. AFL:CIO:CLC. (COMPLAINANT) V. ROMI FOODS LIMITED (RESPONDENT).

12042-66-U: INTERNATIONAL CHEMICAL WORKERS UNION (COMPLAINANT) V. RAYETTE (CANADA) LIMITED (RESPONDENT).

12078-66-U: OFFICE AND PROFESSIONAL EMPLOYEES' INTERNATIONAL UNION, LOCAL 343 (COMPLAINANT) V. PETER ELCHESYN, TREASURER AND MANAGER, MASSEY-FERGUSON EMPLOYEES' (TORONTO) CREDIT UNION LTD. (RESPONDENT).

12082-66-U: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. SENECA WIRE OF CANADA LIMITED (RESPONDENT).

12083-66-U: HOTEL, MOTEL AND RESTAURANT EMPLOYEES' UNION, AFL-CIO-CLC. LOCAL 899 (COMPLAINANT) V. AVENIDA HOTEL ENTERPRISES LIMITED, CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF NEW PARKWAY HOTEL (RESPONDENT).

12116-66-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. CREATIVE DISPLAY ADVERTISING LIMITED (RESPONDENT).

12147-66-U: JOE ANDREWS (COMPLAINANT) V. CANADIAN LINEN SUPPLY (RESPONDENT).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

12107-66-M: LIMESTONE QUARRIES LIMITED AND UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (JOINT APPLICANTS). (GRANTED).

12117-66-M: COW & GATE (CANADA) LIMITED AND UNITED DAIRY & CREAMERY WORKERS, LOCAL NO. 546, BROCKVILLE, ONTARIO, CHARTERED BY THE RETAIL, WHOLESALE & DEPARTMENT STORE UNION OF AMERICA (A.F.L.-C.I.O.-C.L.C.) (JOINT APPLICANTS). (GRANTED).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING AUGUST

11891-66-M: LOCAL 440, RETAIL, WHOLESALE DAIRY WORKERS' UNION, OF THE RETAIL WHOLESALE AND DEPARTMENT STORE UNION AFL-CIO-CLC (APPLICANT) V. ALLIANCE DAIRY LIMITED; DOMINION DAIRIES LIMITED (TORONTO DIVISION); AND MILK AND BREAD DRIVER AND DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 336).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

11526-65-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. HANFORD LUMBER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

11821-66-R: TEXTILE WORKERS UNION OF AMERICA, CLC-AFL-CIO (APPLICANT) V. HARDING BRANTFORD LIMITED (RESPONDENT) V. THE CANADIAN TEXTILE COUNCIL, LOCAL 501 (INTERVENER). (REQUEST DENIED).

11951-66-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) V. CHARLES DUNCAN, AND TORONTO AND DISTRICT COUNCIL OF CARPENTERS AND MILLMEN, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENTS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 339).

12008-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. THE WANDER COMPANY OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 341).

INDEXED ENDORSEMENTS - CERTIFICATION

11348-65-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210 (APPLICANT) V. THE CORPORATION OF THE COUNTY OF LAMBTON (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. FINKELMAN, Q.C., CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: M. LEVINSON AND T. BORG FOR THE APPLICANT, J. CULLEN FOR THE RESPONDENT, AND NO ONE APPEARING FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (APRIL 15, 1966)

THIS IS AN APPLICATION FOR CERTIFICATION.

THE NAME "LAMBTON COUNTY TWILIGHT HAVEN" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "THE CORPORATION OF THE COUNTY OF LAMBTON".

THE RESPONDENT PASSED A BY-LAW PURSUANT TO SECTION 89 OF THE LABOUR RELATIONS ACT ON JUNE 30, 1956, TO THE EFFECT THAT THE ACT SHOULD NOT APPLY TO THE RESPONDENT WITH RESPECT TO ITS EMPLOYEES OR ANY OF THEM. THE APPLICANT CONTENDS THAT THE TWILIGHT HAVEN HOME IS A HOSPITAL WITHIN THE MEANING OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965, STATUTES OF ONTARIO 1965, c. 48, AND THAT UNDER SUBSECTION 3 OF SECTION 2 OF THAT ACT NO DECLARATION UNDER SECTION 89 OF THE LABOUR RELATIONS ACT MAY BE MADE WITH RESPECT TO HOSPITAL EMPLOYEES TO WHOM THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT APPLIES AND ANY SUCH DECLARATION THERETOFORE MADE CEASED TO HAVE EFFECT ON THE DAY WHEN THE LATTER ACT CAME INTO FORCE, I.E., APRIL 14, 1965. THE QUESTION BEFORE US AT THIS STATE IS, THEREFORE, WHETHER THE TWILIGHT HAVEN HOME IS A HOSPITAL WITHIN THE MEANING OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT.

ACCORDING TO AN AGREED STATEMENT OF FACTS SUBMITTED BY COUNSEL FOR THE PARTIES TO THE BOARD, THE TWILIGHT HAVEN HOME, MAINTAINED BY THE RESPONDENT UNDER THE HOMES FOR THE AGED ACT, R.S.O. 1960, c. 174, HOUSES APPROXIMATELY 170 PERSONS, OF WHOM 90 ARE BED CARE PATIENTS, WHILE 80 ARE NOT CONFINED TO BED. THE BED CARE CASES SUFFER MAINLY FROM ARTHRITIS, ASTHMATIC AND CARDIAC DISEASES. ONE OF THESE CASES IS BLIND. THOSE RESIDENTS OF THE HOME WHO ARE AMBULATORY ARE ALSO AFFLICTED WITH ARTHRITIS, ASTHMATIC AND CARDIAC DISEASES, ETC., AND REQUIRE CONTINUAL ASSISTANCE AND CARE.

AT THE REQUEST OF THE BOARD, COUNSEL FOR THE RESPONDENT SUBMITTED A LIST OF THE OCCUPATIONS OF ALL EMPLOYEES AT THE HOME. THERE WOULD APPEAR TO BE 66 EMPLOYEES IN ALL. INCLUDED IN THIS NUMBER ARE TWENTY FULL-TIME AND FIVE PART-TIME NURSES' AIDS, TWO ORDERLIES, ONE HEAD NURSE, ONE PART-TIME NURSING SUPERVISOR AND TWO R.N.A. SUPERVISORS OF SHIFTS OF NURSES' AIDS. IN OTHER WORDS, ALMOST HALF THE STAFF OF THE HOME CONSISTS OF PERSONS WHO BY THEIR CLASSIFICATIONS ARE COMMONLY REGARDED AS DIRECTLY CONNECTED WITH THE CARE OF PATIENTS AFFLICTED WITH OR SUFFERING FROM PHYSICAL ILLNESS, DISEASE OR INJURY.

THE TERM "HOSPITAL" IS DEFINED IN THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT AS FOLLOWS:

"HOSPITAL" MEANS ANY HOSPITAL, SANITARIUM, SANATORIUM OR OTHER INSTITUTION OPERATED FOR THE OBSERVATION, CARE OR TREATMENT OF PERSONS AFFLICTED WITH OR SUFFERING FROM ANY PHYSICAL OR MENTAL ILLNESS, DISEASE OR INJURY, OR FOR THE OBSERVATION, CARE OR TREATMENT OF CONVALESCENT OR CHRONICALLY ILL PERSONS, WHETHER OR NOT IT IS GRANTED AID OUT OF MONEYS APPROPRIATED BY THE LEGISLATURE AND WHETHER OR NOT IT IS OPERATED FOR PRIVATE GAIN.

IT WILL BE NOTED THAT THE DEFINITION IS COINED IN WIDE TERMS; IT INCLUDES (1) NOT ONLY ANY HOSPITAL, BUT ALSO ANY OTHER INSTITUTION, (11) OPERATED NOT ONLY FOR THE OBSERVATION AND TREATMENT OF PERSONS AFFLICTED WITH OR SUFFERING FROM PHYSICAL ILLNESS, DISEASE OR INJURY, OR WHO ARE CHRONICALLY ILL, BUT ALSO FOR THE CARE OF SUCH PERSONS. IN OUR OPINION, THE VAST MAJORITY OF THE RESIDENTS IN THE HOME ARE PERSONS WHO REQUIRE CARE OR TREATMENT IN AN INSTITUTION OPERATED FOR THAT PURPOSE. IT IS NOT WITHOUT SIGNIFICANCE, THAT COUNSEL FOR BOTH PARTIES, IN THE AGREED STATEMENT OF FACTS REFER TO THE NON-AMBULATORY RESIDENTS AS "PATIENTS".

AN AMENDMENT TO SECTION 13 OF THE HOMES FOR THE AGED ACT, ENACTED IN 1961 - 62, PROVIDES THAT THE CLASSES OF PERSONS WHO MAY BE ADMITTED TO AND MAINTAINED IN A HOME UNDER THAT ACT INCLUDE INTER ALIA PERSONS WHO REQUIRE BED CARE AND GENERAL PERSONAL NURSING SERVICES, BUT WHO DO NOT REQUIRE CARE IN A HOSPITAL. THE TERM "HOSPITAL" IS NOT DEFINED IN THE HOMES FOR THE AGED ACT. ALTHOUGH THE TWILIGHT HAVEN HOME MAY NOT BE A HOSPITAL WITHIN THE MEANING OF THAT TERM AS USED IN THE HOMES FOR THE AGED ACT, NEVERTHELESS IT IS IN OUR OPINION ON THE FACTS PRESENTED IN THIS CASE AN INSTITUTION OPERATED FOR THE TREATMENT OR CARE OF PERSONS AFFLICTED WITH OR SUFFERING FROM PHYSICAL ILLNESS, DISEASE OR INJURY, OR THE CARE OR TREATMENT OF PERSONS WHO ARE CHRONICALLY ILL. IT IS THEREFORE AN INSTITUTION THAT COMES WITHIN THE GENERIC MEANING OF THE TERM "HOSPITAL" AS DEFINED IN THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. IT FOLLOWS, UNDER SUBSECTION 3 OF SECTION 2 OF THAT ACT THAT THE BY-LAW PASSED BY THE RESPONDENT ON JULY 30, 1956, DOES NOT APPLY TO THE EMPLOYEES OF THE TWILIGHT HAVEN HOME. THE REGISTRAR IS DIRECTED TO LIST THIS APPLICATION FOR CONTINUATION OF HEARING ON THE REMAINING ISSUES.

11536-65-R: LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS INTERNATIONAL UNION, LOCAL 351 (APPLICANT) v. VAIL'S SYSTEMS COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

DECISION OF THE BOARD: (AUGUST 2, 1966)

1. FOLLOWING THE APPOINTMENT OF MR. R. A. WOOLAND, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD WITH RESPECT TO THE LIST OF EMPLOYEES FURNISHED BY THE RESPONDENT IN THIS MATTER, A NUMBER OF MEETINGS WERE CONVENED BY THE EXAMINER AND CERTAIN INVESTIGATIONS CARRIED OUT BY HIM. THE APPLICANT HAS ALLEGED THAT CERTAIN PERSONS OUGHT NOT TO BE INCLUDED IN THE LIST OF EMPLOYEES FURNISHED BY THE RESPONDENT. THE RESPONDENT NOW REQUESTS THE BOARD TO RULE THAT THE APPLICANT MUST GIVE PARTICULARS OF THESE ALLEGATIONS.

2. IN ITS APPLICATION, THE APPLICANT STATED THAT THERE WERE APPROXIMATELY 40 PERSONS IN THE BARGAINING UNIT WHICH IT PROPOSED. THE RESPONDENT IN THE SCHEDULES TO ITS REPLY LISTED THE NAMES OF SOME 65 PERSONS. THE RESPONDENT HAS ADVISED THE BOARD THAT OF 50 PERSONS STILL EMPLOYED BY IT IN THE BARGAINING UNIT, THE UNION HAS CHALLENGED 43. THE APPLICANT, WE ARE ADVISED, ALLEGES THAT 20 OF THESE PERSONS EXERCISE SUPERVISORY FUNCTIONS, THAT 17 WERE NOT IN THE EMPLOY OF THE RESPONDENT AT THE TIME OF THE APPLICATION FOR CERTIFICATION, AND THAT 6 DO NOT PERFORM WORK WITHIN THE BARGAINING UNIT. IT MAY BE OBSERVED THAT BY THIS RECKONING THE APPLICANT'S

OWN ESTIMATE OF THE NUMBER OF PERSONS IN THE BARGAINING UNIT WAS GROSSLY IN ERROR.

3. THE BOARD IS CONCERNED THAT ITS PROCESSES AND THE RIGHTS OF ALL PARTIES NOT BE ABUSED BY THE MAKING OF ALLEGATIONS WITHOUT FOUNDATION. WHERE, HOWEVER, A CLAIM IS MADE THAT THE LIST OF EMPLOYEES IS NOT CORRECT, THE BOARD HAS NO ALTERNATIVE BUT TO CONDUCT ITS USUAL INQUIRY THROUGH AN EXAMINER AS HAS BEEN DONE IN THE INSTANT CASE. WHERE THE EXAMINER HAS, AS IN THE INSTANT CASE, INVESTIGATED THE RECORDS OF THE EMPLOYER, THE APPLICANT SHOULD BE ENTITLED TO PRESENT EVIDENCE TO CONTRADICT THAT WHICH THE EXAMINER HAS EXAMINED. IN THE INSTANT CASE THE BOARD DIRECTS THAT THE EXAMINER CALL FOR EXAMINATION THOSE PERSONS WHOSE NAMES APPEAR ON THE LIST OF EMPLOYEES FURNISHED BY THE RESPONDENT AND WHO THE APPLICANT CLAIMS WERE NOT IN THE EMPLOY OF THE RESPONDENT ON THE DATE OF THE MAKING OF THE APPLICATION. IN THESE PROCEEDINGS, EXAMINATION AND CROSS-EXAMINATION SHALL BE LIMITED TO THE ISSUE WHETHER THESE PERSONS WERE IN THE EMPLOY OF THE RESPONDENT ON THE DATE OF THE MAKING OF THE APPLICATION.

4. THE EXAMINER IS DIRECTED TO MAKE AN INTERIM REPORT TO THE BOARD WITH RESPECT TO THIS ISSUE. THE BOARD RESERVES ITS RULING ON THE REQUEST OF THE RESPONDENT THAT THE APPLICANT FURNISH PARTICULARS OF ITS ALLEGATIONS WITH RESPECT TO THE LIST OF EMPLOYEES WHICH HAS BEEN FURNISHED BY THE RESPONDENT.

11864-66-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA,
LOCAL 1668 (APPLICANT) v. CANADIAN PITTSBURGH INDUSTRIES LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (AUGUST 29, 1966)

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. THE EVIDENCE RELATING TO THE QUESTION AS TO WHETHER THIS IS AN APPLICATION WHICH FALLS UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT IS FAR FROM SATISFACTORY. ONE OF THE CHIEF DIFFICULTIES IS THAT THE APPLICANT, AND THE EMPLOYEES WHO TESTIFIED BEFORE THE EXAMINER, ARE APPARENTLY UNACQUAINTED WITH THE DEFINITION OF CONSTRUCTION INDUSTRY AS CONTAINED IN THE LABOUR RELATIONS ACT. THUS FOR EXAMPLE THE APPLICANT ARGUES AND THE EMPLOYEES ASSERT THEY ARE WORKING IN CONSTRUCTION WHEN THEY CUT OR EDGE GLASS FOR WINDSHIELDS TO BE PUT INTO ROAD GRADERS OR REFRIGERATION UNITS BEING MANUFACTURED BY OTHER COMPANIES. IT IS OBVIOUS THAT SUCH OPERATIONS DO NOT FALL WITHIN SECTION 1(1)(DA) OF THE LABOUR RELATIONS ACT, WHICH PROVIDES:

"CONSTRUCTION INDUSTRY" MEANS THE BUSINESSES THAT ARE ENGAGED IN CONSTRUCTING, ALTERING, DECORATING, REPAIRING OR DEMOLISHING BUILDINGS, STRUCTURES ROADS, SEWERS, WATER OR GAS MAINS, PIPE LINES, TUNNELS, BRIDGES, CANALS OR OTHER WORKS AT THE SITE THEREOF.

ESTIMATES MADE BY EMPLOYEES OF THE AMOUNT OF TIME SPENT WORKING ON CONSTRUCTION ARE THUS OF LITTLE VALUE. ON THE BASIS OF THE RESPONDENT'S EVIDENCE NO EMPLOYEES, OR AT BEST ONE, ARE EMPLOYED FOR THE MAJORITY OF THEIR TIME ON CONSTRUCTION WORK.

AFTER CONSIDERING ALL THE EVIDENCE BEFORE US WE ARE NOT SATISFIED THAT THIS IS AN APPLICATION FALLING UNDER SECTION 92 OF THE LABOUR RELATIONS ACT.

3. THE QUESTION OF THE APPROPRIATE BARGAINING UNIT IS ALSO ONE OF SOME DIFFICULTY. THE EMPLOYEES OF THE RESPONDENT AT ITS BRANTFORD PLANT ARE PRESENTLY REPRESENTED BY ANOTHER UNION ON AN "ALL EMPLOYEES" BASIS WITH THE USUAL EXCLUSION. THE APPLICANT APPLIED FOR ESSENTIALLY THE SAME TYPE OF UNIT BUT SOUGHT LEAVE TO AMEND THIS DESCRIPTION AT THE HEARING BY ASKING FOR A CRAFT CONSTRUCTION UNIT. AT THE HEARING BEFORE THE EXAMINER THE APPLICANT CLEARLY REVERTED TO ITS ORIGINAL POSITION BUT, FOLLOWING THE RELEASE OF THE EXAMINER'S REPORT, IT SEEMS AGAIN TO HAVE RETURNED TO THE CRAFT UNIT. NOW THAT WE HAVE FOUND THAT THIS IS NOT A CONSTRUCTION INDUSTRY CASE THE QUESTION AS TO WHETHER THE BOARD SHOULD GRANT A CRAFT UNIT BECOMES A MATTER FOR ITS DISCRETION UNDER THE TERMS OF SECTION 6(2) OF THE LABOUR RELATIONS ACT.

4. HAVING REGARD TO THE NATURE OF THE RESPONDENT'S OPERATIONS AND TO THE TYPES OF WORK PERFORMED BY THE EMPLOYEES BOTH INSIDE AND OUTSIDE THE SHOP IT WOULD BE EXTREMELY DIFFICULT TO DESCRIBE A CRAFT UNIT IN THIS CASE. MOREOVER A CRAFT UNIT WOULD LEAVE SOME BARGAINING RIGHTS WITH THE PRESENT INCUMBENT AND THIS WOULD RESULT IN AN ALMOST IMPOSSIBLE SITUATION FOR ALL CONCERNED. WE ARE THEREFORE SATISFIED THAT AN ALL EMPLOYEE UNIT IS THE APPROPRIATE UNIT IN THIS CASE. THE BOARD THEREFORE FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NO LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

6. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE OF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

7. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 1668, AND THE INTERNATIONAL CHEMICAL WORKER'S UNION LOCAL 172.

8. THE MATTER IS REFERRED TO THE REGISTRAR.

11880-66-R: INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA) (APPLICANT) v. N. MORISSETTE DIAMOND DRILLING LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND D. W. FORGIE.

APPEARANCES AT THE HEARING: W. KENNEDY, D. KELLY, D. BEDARD AND Y. JOLY FOR THE APPLICANT, L. J. VALIN, Q.C., AND R. MORISSETTE FOR THE RESPONDENT,

G. LESSARD AND F. LEGAULT FOR A GROUP OF EMPLOYEES.

DECISION OF J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER
F. W. MURRAY: (August 17, 1966)

. . .

2. THE BOARD FURTHER FINDS THAT ALL DIAMOND DRILLERS AND HELPERS EMPLOYED BY THE RESPONDENT IN THE TOWNSHIPS OF LEVACK, FOY, MACLENNAN AND DENISON AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT REPAIR CREWS AND SERVICE MEN ARE NOT INCLUDED IN THE BARGAINING UNIT.

4. THERE WAS FILED WITH THE BOARD THREE IDENTICAL STATEMENTS OF DESIRE (HEREINAFTER REFERRED TO AS THE PETITIONS) EXPRESSING OPPOSITION TO THE INSTANT APPLICATION. ACCORDING TO GILBERT LESSARD, AN EMPLOYEE OF THE RESPONDENT WHO TESTIFIED IN SUPPORT OF THE PETITIONS, ON HIS OWN INITIATIVE HE RETAINED THE SERVICES OF A SOLICITOR WHO PREPARED THE PETITIONS. LESSARD'S EVIDENCE IS THAT HE THEREUPON PROCEEDED TO SECURE ALL OF THE SIGNATURES THAT APPEAR ON THE PETITIONS AT THE HOMES OF THE EMPLOYEES OUTSIDE OF WORKING HOURS. HE TESTIFIED THAT NO MEMBERS OF MANAGEMENT WERE PRESENT WHEN ANY OF THE SIGNATURES WERE SOLICITED ON THE PETITIONS. LESSARD ADMITTED, HOWEVER, THAT HE HAD APPROACHED A FOREMAN AND REQUESTED A LIST OF THE ADDRESSES OF THE EMPLOYEES OF THE RESPONDENT AND THAT SUCH A LIST HAD BEEN PROVIDED TO HIM BY THE FOREMAN. LESSARD'S EVIDENCE IS THAT HE DID NOT TELL THE FOREMAN, NOR DID THE FOREMAN INQUIRE AS TO THE PURPOSE FOR WHICH LESSARD WANTED THE ADDRESSES.

5. WE DO NOT FIND THAT THE CONDUCT OF THE FOREMAN IN THE CIRCUMSTANCES OF THE INSTANT CASE CONSTITUTES EVIDENCE OF MANAGEMENT SUPPORT WHICH WOULD CAUSE THE BOARD TO DISREGARD THE PETITIONS. RATHER, THE BOARD IS SATISFIED ON THE EVIDENCE BEFORE IT THAT THE PETITIONS REPRESENT A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHO SIGNED IT. THE BOARD ACCORDINGLY FINDS THAT THE PETITIONS SO WEAKEN THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT AS TO REQUIRE THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

7. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

8. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER D. W. FORGIE: (AUGUST 17, 1966)

I DISSENT.

THE EVIDENCE MAKES IT CLEAR THAT GILBERT LESSARD SOUGHT AND SECURED THE ASSISTANCE OF A MEMBER OF MANAGEMENT TO AID HIM IN THE CIRCULATION OF THE PETITIONS. WHILE LESSARD TESTIFIED THAT HE DID NOT TELL THE FOREMEN THE PURPOSE FOR WHICH HE WANTED THE ADDRESSES OF THE EMPLOYEES, THE VERY FACT THAT THE FOREMAN PROVIDED SUCH A LIST WITHOUT ANY QUESTIONS LEAVES A CLEAR INFERENCE THAT HE KNEW THE PURPOSE FOR WHICH LESSARD INTENDED TO USE THE LIST. IN MY OPINION, THE ACTION OF THE FOREMAN CONSTITUTES MANAGEMENT SUPPORT FOR THE PETITIONS. ACCORDINGLY I WOULD NOT HAVE GIVEN ANY WEIGHT TO THE PETITIONS AND WOULD HAVE GRANTED OUTRIGHT CERTIFICATION TO THE APPLICANT.

11916-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. KRALINATOR FILTERS LIMITED (RESPONDENT) V. CANADIAN STEEL WORKERS' UNION KRALINATOR DIVISION No. 1, N.C.C.L. (INTERVENER).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: LORNE INGLE AND EARL CERSON FOR THE APPLICANT, WARREN K. WINKLER AND WILLIAM H. ARMSTRONG FOR THE RESPONDENT, AND H. C. KERR AND T. V. DOODY FOR THE INTERVENER.

DECISION OF RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER F. W. MURRAY: (AUGUST 19, 1966)

1. FOLLOWING THE TAKING OF A PRE-HEARING REPRESENTATION VOTE HELD BY DIRECTION OF THE BOARD ON JULY 19TH, 1966, THE APPLICANT SUBMITTED A WRITTEN STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS, ALLEGING THAT THE INTERVENER HAD VIOLATED THE DIRECTION OF THE REGISTRAR, WHICH INSTRUCTED ALL INTERESTED PERSONS TO REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING FROM MIDNIGHT ON FRIDAY THE 15TH DAY OF JULY, 1966, UNTIL THE VOTE HAD BEEN TAKEN.

2. THE EVIDENCE IS QUITE CLEAR THAT FIVE EMPLOYEES OF KRALINATOR FILTERS LIMITED, WHO APPEARED AS WITNESSES, RECEIVED IN THE MAIL ELECTION PROPAGANDA FROM THE NATIONAL COUNCIL OF CANADIAN LABOUR, AN INTERESTED PARTY, ON SATURDAY, JULY 16TH, THIS BEING WITHIN THE "SILENT" PERIOD ESTABLISHED BY THE DIRECTION OF THE REGISTRAR. THE CANCELLATION STAMP ON THE ENVELOPES CARRYING THE PROPAGANDA READ "TORONTO 8:30 A.M., JULY 15, 1966, ONTARIO".

3. MR. THOMAS DOODY, FIELD REPRESENTATIVE OF THE NATIONAL COUNCIL OF CANADIAN LABOUR, GAVE EVIDENCE THAT HIS ORGANIZATION HAD MAILED PROPAGANDA MATERIAL TO SOME 167 EMPLOYEES OF KRALINATOR, INCLUDING THE FIVE WITNESSES. HE STATED THAT THE ENVELOPES CONTAINING THE MATERIAL WERE STAMPED WITH 5¢ STAMPS TO ENSURE CARRIAGE BY FIRST CLASS MAIL AND TIED IN BUNDLES ACCORDING TO DESTINATION (EMPLOYEES OF THE COMPANY LIVE IN THE PRESTON, GALT AND KITCHENER AREAS) IN ORDER TO EXPEDITE SORTING, AND WERE MAILED FROM POSTAL STATION "U" IN TORONTO AT 4:30 P.M. ON THURSDAY, JULY 14TH, 1966.

4. DOODY TESTIFIED THAT PRIOR TO MAILING THE LETTERS, HE HAD ASCERTAINED FROM OFFICIALS AT POSTAL STATION "U" THAT LETTERS MAILED BEFORE 6:00 P.M. ON JULY 14TH WOULD BE DELIVERED IN THE PRESTON, GALT AND KITCHENER AREAS ON JULY 15TH. HE WAS UNABLE TO OFFER ANY EXPLANATION AS TO WHY THE CANCELLATION STAMPS BORE THE INFORMATION REFERRED TO ABOVE.

5. THE INTERVENER CALLED A MR. CLARENCE SWITZER, WHO HAS BEEN A POSTAL INSPECTOR IN TORONTO FOR SOME TWENTY YEARS. HIS EVIDENCE IS THAT THE TIME AND DATE OF CANCELLATION HAVE REFERENCE TO WHEN THE MAIL WAS PROCESSED AT THE MAIN TORONTO POST OFFICE AND DO NOT INDICATE THE TIME AT WHICH IT WAS POSTED IN THE BRANCH POST OFFICE. MAIL ARRIVING AT THE MAIN POST OFFICE AT 5:15 P.M. MIGHT WELL NOT BE PROCESSED UNTIL 1:00 A.M. OF THE FOLLOWING DAY AND WOULD BEAR THE DATE OF THE DAY IT WAS PROCESSED. BUNDLES OF ENVELOPES STAMPED WITH AFFIXED RATHER THAN PRINTED STAMPS HAVE TO BE UNTIED FOR CANCELLATION AND IT FREQUENTLY HAPPENS THAT SOME OF THE BUNDLE GETS LEFT BEHIND. THE POST OFFICE GETS COMPLAINTS ABOUT THIS SORT OF THING. NORMALLY LETTERS MAILED AT POSTAL STATION "U" SHOULD BE DELIVERED ON THE FOLLOWING DAY IN THE AREAS IN QUESTION.

6. IT IS URGED BY THE APPLICANT THAT THE "NO PROPAGANDA" OR "SILENT PERIOD" RULE WAS ONE THAT WAS ABSOLUTE, AND THAT IF VIOLATED IN ANY WAY A NEW VOTE MUST BE ORDERED.

7. REFERENCE WAS MADE BY COUNSEL FOR ALL PARTIES TO A NUMBER OF CASES IN WHICH THE BOARD HAS DEALT WITH THE PRINCIPLE TO BE APPLIED IN INSTANCES INVOLVING ALLEGATIONS OF VIOLATIONS OF THE "NO PROPAGANDA RULE". MOST OF THESE CASES ARE REVIEWED AND ANALYSED IN THE BOARD'S DECISION IN THE AUTOMATIC ELECTRIC (CANADA) LIMITED CASE, C.L.S. 76-815.

8. THE CONCLUSION REACHED BY THE BOARD IN THE AUTOMATIC ELECTRIC CASE IS THAT, IN INSTANCES WHERE THE ACTION UPON WHICH THE COMPLAINT RESTS WAS INITIATED PRIOR TO THE COMMENCEMENT OF THE SILENT PERIOD, THE TEST TO BE APPLIED IS THAT OF A STRICT RULE WITH A HEAVY ONUS ON THE PARTIES TO SEE THAT THE RULE IS NOT INFRINGED. THIS STATEMENT OF THE TEST IS APPROVED AND APPLIED IN THE INTERNATIONAL NICKEL COMPANY OF CANADA CASE, C.L.S. 76-876, AND WE BELIEVE, WITH RESPECT, EMBODIES THE CORRECT VIEW OF THE MATTER.

9. FROM THE LANGUAGE OF THE CASES, IT WOULD APPEAR THAT THE ONUS IMPOSED BY THE TEST MAY BE DISCHARGED IF "ALL REASONABLE PRECAUTIONS" AGAINST VIOLATION OF THE RULE HAVE BEEN TAKEN OR IF IT BE SHOWN THAT THE VIOLATION WAS ONE THAT "COULD NOT REASONABLY HAVE BEEN FORESEEN". (AUTOMATIC ELECTRIC, INTERNATIONAL NICKEL COMPANY OF CANADA LIMITED, SUPRA, WILCOLATOR CASE, O.L.R.B. MONTHLY REPORT, OCTOBER, 1959, PP. 245-8).

10. ON THE BASIS OF ALL THE EVIDENCE, WE ARE SATISFIED THAT DOODY TOOK REASONABLE PRECAUTIONS AGAINST VIOLATION OF THE RULE AND THAT THE VIOLATION THAT DID OCCUR WAS NOT ONE WHICH COULD HAVE REASONABLY BEEN FORESEEN, PARTICULARLY IN VIEW OF THESE SAME PRECAUTIONS AND OF THE INFORMATION HE RECEIVED AS TO THE NORMAL COURSE OF THE MAILS.

11. IN THE CIRCUMSTANCES OF THIS CASE WE DO NOT FIND IN THE OBJECTIONS OF THE APPLICANT ANY GROUND FOR HOLDING THAT THE REPRESENTATION VOTE TAKEN IN THIS MATTER ON JULY 19TH, 1966, SHOULD BE DECLARED VOID.

12. ON THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE DIRECTED BY THE BOARD NOT MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE APPLICANT.

13. THE APPLICATION IS THEREFORE DISMISSED.

. . .

DECISION OF BOARD MEMBER P. J. O'KEEFFE: (August 19, 1966)

I DISSENT.

I AGREE WITH THE FACTS AS STATED BY MY COLLEAGUES ON THE BOARD, HOWEVER, NO MENTION IS MADE OF THE EVIDENCE GIVEN BY MR. DOODY TO THE EFFECT THAT HE STATED THAT ALL OF THE PEOPLE THAT HE CHECKED ON HAD RECEIVED THEIR MAIL ON FRIDAY, JULY 15TH. IN VIEW OF THE PARADE OF FIVE WITNESSES WHO GAVE EVIDENCE THAT THEY DID NOT RECEIVE THEIR MAIL UNTIL SATURDAY, JULY 16TH, AND IN THE ABSENCE OF ANY DIRECT EVIDENCE THAT ANY OF THE AFFECTED EMPLOYEES ACTUALLY RECEIVED THEIR MAIL ON JULY 15TH, I FIND IT EXTREMELY DIFFICULT TO ACCEPT MR. DOODY'S EVIDENCE ON THIS POINT. IN VIEW OF THIS, THERE ARISES A QUESTION OF CREDIBILITY OF THE EVIDENCE FURNISHED BY THIS WITNESS, WHICH THE MAJORITY OF THE BOARD HAVE RELIED ON IN ARRIVING AT THEIR DECISION.

IN VIEW OF THE FOREGOING, I WOULD HAVE NOT GIVEN WEIGHT TO THE EVIDENCE FURNISHED BY THE INTERVENER'S MAIN WITNESS AND WOULD HAVE FOUND THAT THE INTERVENER HAD VIOLATED THE BOARD'S "SILENT PERIOD", AND WOULD HAVE ORDERED A NEW VOTE.

11929-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF EDUCATION FOR THE TOWN OF BURLINGTON (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTOR)

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, W. ACTON, A. RISELEY AND E. A. MOYNES FOR THE APPLICANT, B. W. BINNING, E. L. MOORE, BRUCE T. LINDLEY, J. W. SINGLETON AND WILLIAM S. COOK FOR THE RESPONDENT, AND E. L. STRINGER, JOHN L. AUCKLAND AND DAVID MONTCALM FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (August 19, 1966)

1. THE NAME "BURLINGTON BOARD OF EDUCATION" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "THE BOARD OF EDUCATION FOR THE TOWN OF BURLINGTON".

2. THIS IS AN APPLICATION FOR CERTIFICATION. THE RESPONDENT RAISES THE PRELIMINARY OBJECTION THAT THE LABOUR RELATIONS ACT DOES NOT APPLY TO IT IN ITS RELATIONS WITH ITS EMPLOYEES, AND IT RELIES ON A BY-LAW TO THAT EFFECT, WHICH WAS PASSED ON JUNE 20TH, 1963, PURSUANT TO THE PROVISIONS OF SECTION 89 OF THE LABOUR RELATIONS ACT, R.S.O. 1960, c. 202. THE APPLICANT, IN REPLY TO THE RESPONDENT'S OBJECTION, URGES THAT THE BY-LAW IS OF NO EFFECT, SECTION 89 OF THE LABOUR RELATIONS ACT HAVING BEEN REPEALED BY THE LABOUR RELATIONS AMENDMENT

Act, S.O. 1960, c. 76, s. 37, WHICH WAS PROCLAIMED IN FORCE ON MAY 18TH, 1966. THE RESPONDENT ANSWERS THAT THE REPEALING STATUTE SHOULD NOT BE READ AS AFFECTING THE VALIDITY OF BY-LAWS PASSED PURSUANT TO THE PROVISIONS OF SECTION 89 OF THE LABOUR RELATIONS ACT WHILE THAT SECTION WAS IN FORCE.

3. THE REPEALING STATUTE, BY SECTION 37, ENACTS AS FOLLOWS:-

SECTION 89 OF THE LABOUR RELATIONS ACT IS
REPEALED.

THERE IS NO EXPRESS PROVISION AS TO THE EFFECT OF THIS REPEAL ON BY-LAWS PASSED PURSUANT TO SECTION 89 WHILE IT WAS IN FORCE. COUNSEL FOR THE RESPONDENT ARGUES THAT IN THE ABSENCE OF SUCH EXPRESS PROVISION AND IN THE ABSENCE OF SOME SUBSTITUTED PROVISION, THE BY-LAW IN QUESTION, VALID WHEN ENACTED, REMAINS VALID DESPITE THE ENACTMENT OF S. O. 1966, c. 76, s. 37. IN SUPPORT OF HIS CONTENTION, COUNSEL RELIES UPON THE DECISION OF THE ONTARIO COURT OF APPEAL IN RE SHAWRA, (1928) 63 O.L.R. 158. IN THAT CASE THE COURT UPHELD THE CONVICTION OF THE APPELLANT FOR CONTRAVENTION OF A BY-LAW OF THE POLICE COMMISSIONERS OF THE CITY OF HAMILTON. THE BY-LAW, ADMITTEDLY VALID WHEN IT WAS PASSED IN 1915, PROVIDED THAT IT SHOULD NOT BE LAWFUL FOR ANY PERSON TO USE ANY VEHICLE IN THE "JITNEY 'BUS SERVICE" FOR GAIN WITHOUT BEING LICENSED SO TO DO. THE APPELLANT HAD HAD A JITNEY LICENCE, BUT IT HAD EXPIRED ON THE 30TH JUNE, 1928. HE CONTINUED TO OPERATE WITHOUT A LICENCE AND WAS CONVICTED OF A BREACH OF THE BY-LAW. THE POLICE COMMISSIONERS HAD CEASED TO ISSUE JITNEY LICENCES, SINCE BY AN AGREEMENT BETWEEN THE CITY OF HAMILTON AND A STREET RAILWAY COMPANY, WHICH AGREEMENT WAS VALIDATED BY (1927) 17 Geo. V, C. 40 (ONT.), IT WAS PROVIDED THAT THE CITY SHOULD "NOT ISSUE ANY NEW JITNEY LICENCES OR SANCTION THE TRANSFER OF ANY SUCH LICENCE AT PRESENT IN FORCE, NOR SHALL ANY SUCH JITNEY LICENCE NOW IN FORCE REMAIN IN FORCE AFTER THE 30TH JUNE 1928." COUNSEL FOR THE APPELLANT THERE ARGUED THAT, THE POWER TO GRANT LICENCES HAVING BEEN TAKEN AWAY FROM THE COMMISSIONERS, AS A CONSEQUENCE THE VALIDITY OF THE BY-LAW WAS DESTROYED. COUNSEL RELIED ON R. v. HISCOX. (1879) 44 U.C.Q.B. 214, RIDDELL, J.A., IN GIVING THE JUDGMENT OF THE COURT OF APPEAL AFFIRMING THE CONVICTION DISTINGUISHED THE HISCOX CASE, AND WENT ON TO SAY, AT P. 162:-

THERE IS NO OTHER AUTHORITY ADVANCED, AND I CAN FIND NONE TO SUPPORT THE PROPOSITION THAT LEGISLATION, VALID ON ITS PASSING, CEASES TO BE VALID WHEN THE LEGISLATING BODY IS DEPRIVED OF THE POWER TO PASS SUCH LEGISLATION IN THE FUTURE, THERE BEING NO REPEAL OF PREVIOUS LEGISLATION OR REFERENCE THERETO IN THE DEPRIVING STATUTE.

IT MAY WELL BE THAT, HAD THE STATUTE OF 1927 PLACED IN THE COUNCIL THE POWER OF REGULATING JITNEYS AND GIVING LICENCES, ETC., AND MADE IT THE DUTY OF THE COUNCIL TO EXERCISE THAT POWER, THE FORMER BY-LAW WOULD BECOME EFFETE; BUT THERE IS NOTHING OF THE KIND HERE; ON THE CONTRARY, THE COUNCIL IS FORBIDDEN TO ISSUE LICENCES AT ALL.

4. COUNSEL FOR THE APPLICANT TRADE UNION HAS REFERRED THE BOARD TO THE CASE OF WATSON v. WINCH, [1916] 1 K.B. 688, IN WHICH, IN HIS SUBMISSION, A CONTRARY CONCLUSION WAS REACHED, AND BY VIRTUE OF WHICH, HE SUBMITS, THE DECISION IN

RE SHAWRA SHOULD BE REGARDED AS HAVING BEEN MADE PER INCURIAM. AS TO THE LATTER POINT, IT IS OUR VIEW THAT, ON A COLLATERAL MATTER OF THIS NATURE, IT IS NO PART OF THIS BOARD'S DUTIES TO ATTEMPT TO CORRECT WHAT COUNSEL HAS ARGUED IS A MISTAKEN JUDGMENT OF THE ONTARIO COURT OF APPEAL. DECISIONS OF THIS NATURE ARE THE PROVINCE OF THE COURTS AND GO BEYOND WHAT IT IS NECESSARY FOR THE BOARD TO DO IN MAKING, AS IT NECESSARILY MUST, ITS INITIAL DETERMINATION WHETHER IT HAS JURISDICTION TO PROCEED WITH ANY PARTICULAR CASE.

5. IN ANY EVENT, WHILE 17 GEO. V, C. 40, REMOVED FROM THE HAMILTON POLICE COMMISSIONERS THE POWER TO ISSUE LICENCES, AND WHILE IT RENDERED INVALID, AFTER A PERIOD OF TIME, LICENCES WHICH THE COMMISSIONERS HAD ISSUED, IT DOES NOT FOLLOW THAT THE BY-LAW PROHIBITING THE USE OF UNLICENSED VEHICLES WAS THEREBY AFFECTED IN ANY WAY. THERE IS NOTHING ANOMALOUS IN THE POWER TO GRANT OR REFUSE LICENCES BEING IN ONE BODY, WHILE THE POWER TO PROHIBIT UNLICENSED USE OF VEHICLES IS IN ANOTHER. THIS, INDEED, SEEMS TO HAVE BEEN THE SITUATION IN HAMILTON AFTER 17 GEO. V, C. 40, HAD COME INTO FORCE. THE EXPIRY OF THE LICENCES THEMSELVES WAS EXPRESSLY PROVIDED FOR IN THE STATUTE, WHICH WAS NOT, HOWEVER, CONCERNED WITH THE BY-LAW UNDER WHICH THE APPELLANT WAS CONVICTED. THIS IS, OF COURSE, VERY DIFFERENT FROM THE SITUATION IN THE INSTANT CASE. WITH RESPECT, IT IS OUR VIEW THAT THE CASE OF RE SHAWRA IS SIMPLY NOT DISPOSITIVE OF THE CASE BEFORE THE BOARD.

6. THE INTERPRETATION ACT, R.S.O. 1960, c. 191 PROVIDES IN SECTION 14 (1) AS FOLLOWS:-

WHERE AN ACT IS REPEALED OR WHERE A REGULATION IS REVOKED, THE REPEAL OR REVOCATION DOES NOT, EXCEPT AS IN THIS ACT OTHERWISE PROVIDED,

- (A) REVIVE ANY ACT, REGULATION OR THING NOT IN FORCE OR EXISTING AT THE TIME AT WHICH THE REPEAL OR REVOCATION TAKES EFFECT;
- (B) AFFECT THE PREVIOUS OPERATION OF ANY ACT, REGULATION OR THING SO REPEALED OR REVOKED;
- (C) AFFECT ANY RIGHT, PRIVILEGE, OBLIGATION OR LIABILITY ACQUIRED, ACCRUED, ACCRUING OR INCURRED UNDER THE ACT, REGULATION OR THING SO REPEALED OR REVOKED;
- (D) AFFECT ANY OFFENCE COMMITTED AGAINST ANY ACT, REGULATION OR THING SO REPEALED OR REVOKED, OR ANY PENALTY OR FORFEITURE OR PUNISHMENT INCURRED IN RESPECT THEREOF;
- (E) AFFECT ANY INVESTIGATION, LEGAL PROCEEDING OR REMEDY IN RESPECT OF ANY SUCH PRIVILEGE, OBLIGATION, LIABILITY, PENALTY, FORFEITURE OR PUNISHMENT,

AND ANY SUCH INVESTIGATION, LEGAL PROCEEDING OR REMEDY MAY BE INSTITUTED, CONTINUED OR ENFORCED, AND ANY SUCH PENALTY, FORFEITURE OR PUNISHMENT MAY BE

IMPOSED AS IF THE ACT, REGULATION OR THING HAD NOT BEEN SO REPEALED OR REVOKED.

IT IS URGED ON BEHALF OF THE RESPONDENT THAT THE BY-LAW INVOKING SECTION 89 OF THE LABOUR RELATIONS ACT, R.S.O. 1960, c. 202, WHICH WAS VALID WHEN IT WAS PASSED, HAS IN EFFECT CREATED A "RIGHT" OR "PRIVILEGE" WHICH HAS BEEN "ACQUIRED" OR HAS "ACCRUED" UNDER THAT PROVISION OF THE ACT WHICH IS NOW REPEALED, AND THAT, BY VIRTUE OF SECTION 14 OF THE INTERPRETATION ACT, THE BY-LAW IS NOT AFFECTED BY THE LABOUR RELATIONS AMENDMENT ACT, 1966, SECTION 37.

7. TO THIS ARGUMENT, COUNSEL FOR THE APPLICANT REPLIES THAT THE ENACTMENT OF A BY-LAW INVOKING SECTION 89 OF THE LABOUR RELATIONS ACT, R.S.O. 1960, c. 202, IS NOT THE SAME THING AS THE ACQUISITION OR THE ACCRUAL OF A "RIGHT" OR "PRIVILEGE". COUNSEL RELIED ON THE DECISION OF THE PRIVY COUNCIL IN ABBOTT V. MINISTER FOR LANDS, [1895] A.C. 425, IN WHICH THE COURT AFFIRMED THE JUDGMENT OF THE SUPREME COURT OF NEW SOUTH WALES, WHICH AFFIRMED AN ORDER OF THE LAND COURT OF THE COLONY, DISALLOWING THE APPLICATION OF THE APPELLANT FOR AN ADDITIONAL PURCHASE OF LANDS, TO WHICH PURCHASE HE ALLEGED HE WOULD HAVE BEEN ENTITLED UNDER CERTAIN REPEALED LEGISLATION, PURSUANT TO WHICH HIS ORIGINAL PURCHASE HAD BEEN MADE. THE LORD CHANCELLOR, LORD HALSBURY, STATED AT P. 431:-

IT HAS BEEN VERY COMMON IN THE CASE OF REPEALING STATUTES TO SAVE ALL RIGHTS ACCRUED. IF IT WERE HELD THAT THE EFFECT OF THIS WAS TO LEAVE IT OPEN TO ANY ONE WHO COULD HAVE TAKEN ADVANTAGE OF ANY OF THE REPEALED ENACTMENTS STILL TO TAKE ADVANTAGE OF THEM, THE RESULT WOULD BE VERY FAR-REACHING.

IT MAY BE, AS WINDEYER, J. OBSERVES, THAT THE POWER TO TAKE ADVANTAGE OF AN ENACTMENT MAY WITHOUT IMPROPRIETY BE TERMED A "RIGHT." BUT THE QUESTION IS WHETHER IT IS A "RIGHT ACCRUED" WITHIN THE MEANING OF THE ENACTMENT WHICH HAS TO BE CONSTRUED.

THEIR LORDSHIPS THINK NOT, AND THEY ARE CONFIRMED IN THIS OPINION BY THE FACT THAT THE WORDS RELIED ON ARE FOUND IN CONJUNCTION WITH THE WORDS "OBLIGATIONS INCURRED OR IMPOSED." THEY THINK THAT THE MERE RIGHT (ASSUMING IT TO BE PROPERLY SO CALLED) EXISTING IN THE MEMBERS OF THE COMMUNITY OR ANY CLASS OF THEM TO TAKE ADVANTAGE OF AN ENACTMENT, WITHOUT ANY ACT DONE BY AN INDIVIDUAL TOWARDS AVAILING HIMSELF OF THAT RIGHT, CANNOT PROPERLY BE DEEMED A "RIGHT ACCRUED" WITHIN THE MEANING OF THE ENACTMENT.

IN OUR VIEW, THIS LANGUAGE APPLIES A FORTIORI TO THE CIRCUMSTANCES OF THE INSTANT CASE. IN OUR OPINION, THE "RIGHT" OF THE MUNICIPALITY TO BE FREE FROM THE APPLICATION OF THE LABOUR RELATIONS ACT IN ITS RELATIONS WITH ITS EMPLOYEES IS NOT A "RIGHT ACCRUED" WHICH IS PRESERVED TO THE MUNICIPALITY BY SECTION 14 (1) OF THE INTERPRETATION ACT. IT MAY BE NOTED THAT THIS IS NOT A CASE INVOLVING RIGHTS ARISING UNDER A BY-LAW AND ACCRUING TO AN INDIVIDUAL. RATHER, IT IS THE CONTINUING EFFICACY OF THE BY-LAW ITSELF (EXPRESSIVE OF A LABOUR RELATIONS POLICY NO LONGER PERMITTED UNDER THE LEGISLATION) WHICH IS IN ISSUE.

8. IN WATSON V. WINCH, [1916] 1 K.B. 688, 690, LORD READING, C.J., STATED THE GENERAL RULE THAT A BY-LAW PASSED UNDER A REPEALED STATUTE CEASES TO HAVE ANY VALIDITY UNLESS THE REPEALING ACT CONTAINS SOME PROVISION PRESERVING THE VALIDITY OF THE BY-LAW NOTWITHSTANDING THE REPEAL, AND THIS GENERAL RULE IS RECITED IN ROGERS, LAW OF CANADIAN MUNICIPAL CORPORATIONS, (1959) AT P. 437. IT SHOULD BE NOTED THAT AT THE TIME WATSON V. WINCH WAS DECIDED THE INTERPRETATION ACT, 1889, WHICH CONTAINS IN SECTION 38 (2) PROVISIONS SUBSTANTIALLY IDENTICAL TO THOSE IN R.S.O. 1960, c. 191, s. 14 (1), WAS IN EFFECT. IT MAY ALSO BE OBSERVED THAT THERE IS NO PROVISION IN S.O. 1966, c. 76, PRESERVING THE VALIDITY OF ANY BY-LAW PASSED PURSUANT TO R.S.O. 1960, c. 202, s. 89.

9. IN OUR VIEW, THIS IS A CASE TO WHICH THE GENERAL RULE SHOULD BE APPLIED, AND THE BY-LAW IN QUESTION, PASSED PURSUANT TO A STATUTE NOW REPEALED, MUST BE CONSIDERED AS NOW WITHOUT VALIDITY. THAT BY-LAW, OF COURSE, WAS VALID UNTIL S.O. 1966, c. 76 s. 37, CAME INTO FORCE, AND THE REPEALING PROVISION HAS NO EFFECT ON THINGS DONE PURSUANT TO OR BY VIRTUE OF THAT BY-LAW DURING ITS CURRENCY.

10. FOR THE FOREGOING REASONS THE BOARD IS OF OPINION THAT IT HAS JURISDICTION TO ENTERTAIN THIS APPLICATION. AT THE HEARING OF THIS MATTER, FOLLOWING ARGUMENT ON THE OBJECTION TAKEN BY THE RESPONDENT, COUNSEL AGREED AS A MATTER OF CONVENIENCE AND WITHOUT PREJUDICE TO THE OBJECTION OF THE RESPONDENT TO THE BOARD'S JURISDICTION, THAT THE BOARD SHOULD PROCEED TO ENTERTAIN REPRESENTATIONS ON OTHER ISSUES ARISING IN THIS MATTER.

11. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

12. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT BURLINGTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, TEACHING STAFF, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

13. AT THE FIRST HEARING IN THIS MATTER, CERTAIN INFORMATION WAS GIVEN TO THE PARTIES WITH RESPECT TO THE NUMBER OF PERSONS SAID TO BE EMPLOYED BY THE RESPONDENT IN THE BARGAINING UNIT, THE NUMBER OF PERSONS FOR WHOM THE APPLICANT HAD FILED EVIDENCE OF MEMBERSHIP, AND THE NUMBER OF PERSONS OBJECTING TO THE APPLICATION. SINCE THAT TIME THE RESPONDENT HAS REVISED THE LIST OF EMPLOYEES WHICH IT FILED WITH THE BOARD, AND THE BOARD HAS CONDUCTED A FURTHER CHECK OF THE MATERIAL FILED IN CONNECTION WITH THIS APPLICATION. THAT CHECK YIELDS THE FOLLOWING RESULTS:-

(1) NUMBER OF NAMES ON THE EMPLOYER'S LIST:	61
(2) NUMBER OF PERSONS FOR WHOM THE APPLICANT HAS FILED EVIDENCE OF MEMBERSHIP:	40
(3) NUMBER OF PERSONS IN (2) WHOSE NAMES CORRESPOND WITH NAMES IN (1):	39
(4) NUMBER OF OBJECTORS:	22

(5) NUMBER OF OBJECTORS WHOSE NAMES APPEAR
IN (2):

5

14. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

15. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12008-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. THE WANDER COMPANY OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: DONALD MACDONALD, DAVID ROSS HARPER AND PETER PAUL WEBB FOR THE APPLICANT, W. Z. ESTEY, Q.C., FOR THE RESPONDENT, MRS. EDNA DONNELL, NOLA A. PATTERSON, ARNOLD APSINS AND LEONARD POULIN FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (August 8, 1966)

1. THIS IS AN APPLICATION FOR CERTIFICATION AND THE FACTS OF THIS CASE ARE NOT IN DISPUTE.

2. THIS APPLICATION WAS MADE NAMING ANCA LABORATORIES AS THE RESPONDENT.

3. THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF ANCA LABORATORIES. ANCA LABORATORIES IS NOT AN INCORPORATED ENTITY BUT IS ONE OF FIVE DIVISIONS OF THE WANDER COMPANY OF CANADA LIMITED. APPARENTLY, THE WANDER COMPANY OF CANADA LIMITED TRADES UNDER THE FIRM NAME AND STYLE OF ANCA LABORATORIES AND OPERATES FROM THE PREMISES AT 1377 LAWRENCE AVENUE EAST IN METROPOLITAN TORONTO ON WHICH PREMISES THERE IS A LARGE SIGN WHICH BEARS THE NAME ANCA LABORATORIES. THE EMPLOYEES OF THE WANDER COMPANY OF CANADA LIMITED AT THE LAWRENCE AVENUE EAST ADDRESS ARE PAID BY MEANS OF A CHEQUE ISSUED BY THE WANDER COMPANY OF CANADA LIMITED WHICH CHEQUE IS ACCOMPANIED BY A PAY SLIP ON THE LETTERHEAD OF ANCA LABORATORIES. THE PAY SLIP ALSO CONTAINS THE FOLLOWING STATEMENTS "YOU EARNED AND ANCA PAID" AND "ANCA ALSO CONTRIBUTES". NO REFERENCE IS MADE ON THE PAY SLIP TO THE WANDER COMPANY OF CANADA LIMITED. THE WANDER COMPANY OF CANADA LIMITED FILED A REPLY IN THIS MATTER AND APPEARED AT THE HEARING.

4. AT THE HEARING THE APPLICANT REQUESTED THAT THE BOARD EXERCISE ITS DISCRETION UNDER SECTION 78 OF THE LABOUR RELATIONS ACT AND SUBSTITUTE THE NAME THE WANDER COMPANY OF CANADA LIMITED FOR ANCA LABORATORIES AS THE RESPONDENT IN THIS MATTER, DUE TO THE FACT THAT THE APPLICANT MISTAKENLY BELIEVED ANCA LABORATORIES WAS THE EMPLOYER AND ERRONEOUSLY NAMED ANCA LABORATORIES IN THE APPLICATION.

5. THE RESPONDENT OBJECTED TO THE AMENDMENT ON THE GROUNDS THAT THE APPLICATION IS A NULLITY DUE TO THE FACT THAT THERE IS NO LEGAL ENTITY KNOWN AS ANCA LABORATORIES. THE RESPONDENT ARGUED THAT SINCE THERE IS NO SUCH ENTITY AS ANCA LABORATORIES THERE CAN BE NO APPLICATION FOR CERTIFICATION WITH RESPECT TO ANCA LABORATORIES. IN ADDITION, BECAUSE THERE IS NO ENTITY KNOWN AS ANCA LABORATORIES,

NO PERSON CAN BE "SUBSTITUTED" FOR A NON-EXISTENT RESPONDENT SINCE THERE IS NO PERSON TO BE REPLACED.

6. COUNSEL FOR THE WANDER COMPANY OF CANADA LIMITED ACKNOWLEDGED AT THE HEARING THAT NO ONE HAS BEEN MISLED BY THE FACT THAT ANCA LABORATORIES WAS NAMED AS RESPONDENT AND FURTHER ACKNOWLEDGED THAT HIS ARGUMENT WAS BASED ON A STRICT LEGAL INTERPRETATION OF THE ACT.

7. SECTION 78 OF THE ACT READS AS FOLLOWS:

WHERE IN ANY PROCEEDINGS BEFORE THE BOARD THE BOARD IS SATISFIED THAT A BONA FIDE MISTAKE HAS BEEN MADE WITH THE RESULT THAT THE PROPER PERSON OR TRADE UNION HAS NOT BEEN NAMED AS A PARTY OR HAS BEEN INCORRECTLY NAMED, THE BOARD MAY ORDER THE PROPER PERSON OR TRADE UNION TO BE SUBSTITUTED OR ADDED AS A PARTY TO THE PROCEEDINGS OR TO BE CORRECTLY NAMED UPON SUCH TERMS AS APPEAR TO THE BOARD TO BE JUST.

8. IT IS APPARENT THAT SECTION 78 OF THE ACT CONTEMPLATES THAT THE PROPER PERSON MAY BE "SUBSTITUTED OR ADDED AS A PARTY TO THE PROCEEDINGS OR TO BE CORRECTLY NAMED". IF THE BOARD WERE TO ACCEPT THE RESPONDENT'S ARGUMENT, EACH TIME A MISTAKE WAS MADE IN THE NAME OF A RESPONDENT, THE PROCEEDING WOULD BE A NULLITY. THE BOARD IS OF OPINION THAT SECTION 78 OF THE ACT IS SPECIFICALLY DESIGNED TO PERMIT SUCH A SITUATION TO BE REMEDIED.

9. IN VIEW OF THE FACTS AS SET OUT ABOVE IT IS UNDERSTANDABLE HOW THE APPLICANT COULD BE LED TO BELIEVE THAT ANCA LABORATORIES WAS IN FACT THE EMPLOYER RATHER THAN A DIVISION OF THE WANDER COMPANY OF CANADA LIMITED.

10. HAVING REGARD TO THE DECISION OF THE BOARD IN THE BLUE BELL CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1966, P. 809 IN WHICH CASE A SIMILAR PROBLEM AROSE, THE BOARD IS SATISFIED THAT THE APPLICANT IN THIS MATTER MADE A BONA FIDE MISTAKE WITHIN THE MEANING OF SECTION 78 OF THE ACT, WITH THE RESULT THAT THE PROPER PERSON HAS NOT BEEN NAMED AS THE RESPONDENT OR IN ALL THE CIRCUMSTANCES OF THIS CASE THAT THE RESPONDENT HAS BEEN INCORRECTLY NAMED. IT SHOULD BE NOTED THAT AN APPLICATION FOR CERTIORARI MADE BY THE RESPONDENT IN THE BLUE BELL CANADA LIMITED CASE CAME ON BEFORE THE HONOURABLE MR. JUSTICE BROOKE ON MAY 30TH, 1966 AND WAS DISMISSED.

11. PURSUANT TO THE PROVISIONS OF SECTION 78 OF THE ACT THE NAME "ANCA LABORATORIES" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "THE WANDER COMPANY OF CANADA LIMITED".

12. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

13. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS ANCA LABORATORIES DIVISION AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

14. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

15. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12033-66-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669 (APPLICANT) V. MARCEL BUREAU, HOUSE BUILDER (RESPONDENT).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. K. LAFORCE FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT; R. D. PERKINS FOR ROY CONSTRUCTION & SUPPLY CO. LTD., BETTERIDGE-SMITH CONSTRUCTION, FARQUHAR CONSTRUCTION, HAMBRUFF & DAMBROWITZ, MATAGAMI CONSTRUCTION, L. FORTIN LIMITED, McDUFF CONSTRUCTION, MATEEV BROS. CONSTRUCTION, AND CYPRUS RAPIDS CONSTRUCTION LIMITED; AND H. M. DAVY FOR THE ONTARIO GENERAL CONTRACTORS ASSOCIATION.

DECISION OF THE BOARD: (August 9, 1966)

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2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

3. THE APPLICANT IS APPLYING FOR A UNIT OF EMPLOYEES OF THE RESPONDENT ENCOMPASSING THE GEOGRAPHIC AREA OF THE DISTRICTS OF ALGOMA AND COCHRANE, NORTH OF THE 49TH PARALLEL AND WEST OF THE NORTH DRIFTWOOD, ABITIBI AND MOOSE RIVERS TO JAMES BAY INCLUDING THE NAMED RIVERS. IN THE GEO. E. KNOWLES CASE (BOARD FILE NO. 10657-65-R) THE APPLICANT APPLIED FOR CERTIFICATION FOR THE IDENTICAL GEOGRAPHIC AREA. IN ITS DECISION IN THAT CASE THE BOARD, WHILE RECOGNIZING THAT A NEW AREA WOULD HAVE TO BE DETERMINED IN NORTHEASTERN ONTARIO, STATED THAT IT WAS NOT FAVOURABLY DISPOSED TO THE AREA PROPOSED BY THE APPLICANT. THE APPLICANT SUBMITS THAT IN THE INTERVENING PERIOD SINCE THE FOREGOING DECISION OF THE BOARD ISSUED ON AUGUST 4TH, 1965, THE APPLICANT HAS ENTERED INTO THREE COLLECTIVE AGREEMENTS COVERING THE AREA WHICH IT IS SEEKING IN THIS APPLICATION. ONLY ONE OF THESE AGREEMENTS IS SIGNED WITH A LOCAL KAPUSKASING CONTRACTOR, THE OTHER TWO AGREEMENTS BEING WITH CONTRACTORS WHOSE BASE OF OPERATIONS IS OUTSIDE THE KAPUSKASING AREA. THE APPLICANT ARGUES ON THE BASIS OF THESE AGREEMENTS THAT IT HAS ESTABLISHED A SUFFICIENT PATTERN OF ORGANIZATION TO ENTITLE IT TO CERTIFICATION FOR THE AREA CONCERNED.

4. HAVING CONSIDERED BOTH THE MATERIAL FILED BY THE APPLICANT AT THE HEARING IN THIS MATTER AND THE REPRESENTATIONS OF THE PARTIES, THE APPLICANT STILL HAS FAILED TO SATISFY THE BOARD THAT THE GEOGRAPHIC AREA WHICH IT IS PROPOSING CONSTITUTES AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING. WE WOULD ADD THAT THE BOARD IS MINDFUL OF THE FACT THAT IN THE INSTANT CASE THE RESPONDENT'S CONSTRUCTION ACTIVITIES APPEAR TO BE CONFINED TO HOUSE BUILDING IN KAPUSKASING.

5. THE BOARD ACCORDINGLY FINDS AT THIS TIME THAT ALL CARPENTERS AND CARPENTER APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF KAPUSKASING, SAV AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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12097-66-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION No. 1, N.C.C.L.
(APPLICANT) v. PILLAR CONSTRUCTION LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (August 11, 1966)

1. THE OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION 124, OTTAWA (HEREINAFTER REFERRRED TO AS LOCAL UNION No. 124) HAS FILED AN INTERVENTION DATED AUGUST 10TH, 1966 IN THIS MATTER IN WHICH IT HAS MADE CERTAIN REPRESENTATIONS RELATING TO THE APPLICATION.

2. IN VIEW OF THE FACT THAT LOCAL UNION No. 124 DOES NOT CLAIM TO HOLD THE BARGAINING RIGHTS FOR ANY OF THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION AND HAS FILED NO EVIDENCE OF MEMBERSHIP FOR ANY OF THE EMPLOYEES CONCERNED BY THE TERMINAL DATE OF THE APPLICATION, THE BOARD FINDS THAT LOCAL UNION No. 124 HAS FAILED TO DEMONSTRATE ANY ENTITLEMENT TO BE A PARTY TO THIS PROCEEDING. .

3. HAVING REGARD TO THE ABOVE FINDING THAT LOCAL UNION No. 124 IS A STRANGER TO THIS APPLICATION, THE BOARD IS NOT PREPARED TO ENTERTAIN ANY REPRESENTATIONS MADE BY IT OR ON ITS BEHALF.

12135-66-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL UNION 46
(APPLICANT) v. SENTINEL HEARING SERVICE LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (August 25, 1966)

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6. THE APPLICANT HAS APPLIED FOR ESTABLISHED BOARD AREA No. 8. THE RESPONDENT PROPOSES A MODIFIED GEOGRAPHIC AREA. IN THE CIRCUMSTANCES OF THIS CASE, WE SEE NO JUSTIFICATION FOR DEPARTING FROM THE STANDARD AREA. THE BOARD THEREFORE FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN OIL BURNER SERVICE AND INSTALLATION WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST

BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT SERVICE MANAGER, PERSONS ABOVE THE RANK OF SERVICE MANAGER AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD NOTES THAT THE RESPONDENT INTENDS IN THE FUTURE TO EMPLOY A FIELD SUPERVISOR OR SUPERVISORS UNDER THE SERVICE MANAGER AND HAS REQUESTED THAT THE PROPOSED NEW CLASSIFICATION BE EXCLUDED. HOWEVER, WHERE A PARTY SEEKS TO EXCLUDE FROM A BARGAINING UNIT PERSONS IN AN ALLEGED MANAGERIAL CLASSIFICATION THAT DOES NOT EXIST AT THE TIME OF THE MAKING OF THE APPLICATION, THE PRACTICE OF THE BOARD IS NOT TO EXCLUDE SUCH CLASSIFICATION IN THE DESCRIPTION OF THE BARGAINING UNIT. THE REASON FOR THIS IS THAT UNTIL AN EMPLOYEE FILLS THE CLASSIFICATION, HIS DUTIES AND RESPONSIBILITIES CANNOT BE ACCURATELY DETERMINED. FURTHER, IF AND WHEN SUCH A CLASSIFICATION IS FILLED, IT IS OPEN TO EITHER PARTY TO APPLY TO THE BOARD FOR CLARIFICATION UNDER SECTION 79(2) OF THE LABOUR RELATIONS ACT. FOR THESE REASONS, THE LINE OF SUPERVISION HAS BEEN SET AT SERVICE MANAGER.

INDEXED ENDORSEMENTS - SECTION 65

11887-66-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. BELL CITY FOUNDRY (BRANTFORD) LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: T. ARMSTRONG, R. WHITE AND C. ANDERSON FOR THE COMPLAINANT, AND P. A. BALLACHEY, Q.C., AND W. KOSTUK FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER F. W. MURRAY:

(AUGUST 19, 1966)

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. THE ALLEGATION IS THAT LLOYD HAYWARD HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT.
2. HAYWARD WAS DISCHARGED BY THE RESPONDENT ON THE 13TH OF JUNE, 1966, AT WHICH TIME A UNION ORGANIZING CAMPAIGN WAS BEING CONDUCTED. HE HAD BEEN EMPLOYED AS A POURER AT BELL CITY FOUNDRY FOR SOME TEN YEARS OFF AND ON PRIOR TO HIS DISCHARGE.
3. A GREAT DEAL OF EVIDENCE WAS LED BY THE RESPONDENT, DIRECTED TOWARDS ESTABLISHING THAT HAYWARD'S WORKMANSHIP AND GENERAL ATTITUDE WERE THE PRIME CAUSES OF HIS DISCHARGE. MR. KOSTUK, HOWEVER, WHO IS PRESIDENT AND GENERAL MANAGER OF THE COMPANY, STATED IN HIS EVIDENCE THAT HAD HAYWARD NOT MADE CERTAIN REMARKS WHICH HE, KOSTUK, DEEMED TO BE SLANDEROUS, HE WOULD STILL BE WORKING FOR BELL CITY FOUNDRY. THIS MAKES IT UNNECESSARY TO DEAL AT ANY FURTHER LENGTH WITH THAT ASPECT OF THE CASE RELATING TO WORK PERFORMANCE AND REDUCES THE GROUNDS TO BE CONSIDERED WITH RESPECT TO JUSTIFICATION FOR THE DISCHARGE TO THE ALLEGEDLY SLANDEROUS STATEMENT MADE BY HAYWARD.

4. THE STATEMENT REFERRED TO WAS TO THE EFFECT THAT WHEN THE UNION GOT IN, THE INCOME TAX PEOPLE WOULD COME IN AND CHECK KOSTUK'S BOOKS AND THAT THEN THE EMPLOYEES WOULD HAVE HIM, TO BROADLY PARAPHRASE A CERTAIN INDELICATE EXPRESSION, IN AN EXTREMELY UNCOMFORTABLE POSITION.

5. ON JUNE 10TH, THE DAY FOLLOWING THE DISCHARGE OF AN EMPLOYEE, ARTHUR SEARS, WHOM THE BOARD HAS FOUND WAS DISCHARGED BY THE RESPONDENT BECAUSE OF UNION ACTIVITIES AND WHO APPEARED TO BE THE LEADING FIGURE IN THE UNION ORGANIZATIONAL DRIVE, SEVERAL ENCOUNTERS TOOK PLACE BETWEEN KOSTUK AND HAYWARD IN THE SHOP.

6. THE EVIDENCE WITH RESPECT TO THESE ENCOUNTERS INDICATES THAT KOSTUK WAS FULLY AWARE OF HAYWARD'S CONNECTIONS WITH THE UNION AND REVEALS HIS OPPOSITION TO AND PREJUDICES WITH RESPECT TO THE UNION AND HAYWARD'S ASSOCIATION WITH IT, IT ALSO, BECAUSE OF THE SARCASM AND RIDICULE EMPLOYED BY KOSTUK, CONVEYS THE NOTION THAT HE DID NOT CONSIDER HAYWARD TO BE A SERIOUS THREAT AS A UNION LEADER. HIS OPEN ATTEMPTS AT DISSUASION AND HIS USE OF DERISION SUGGEST THAT HAVING GOT RID OF SEARS, WHOM HE DID CREDIT WITH BEING THE LEADER OF THE MOVEMENT, HE FELT HE COULD PRESSURE HAYWARD INTO DROPPING THE IDEA OF THE UNION. IT SHOULD BE REMEMBERED IN THIS CONNECTION THAT KOSTUK CONSIDERED HAYWARD TO BE "A GOOD FELLOW" EXCEPT WHEN HE WAS UNDER SEARS INFLUENCE. THIS, OF COURSE, IS NOT TO SAY THAT SUCH CONDUCT ON KOSTUK'S PART IS IN ANY WAY JUSTIFIABLE. THE POINT IS THAT IT REVEALS AN INTENT TO USE PERSUASION IN AN EFFORT TO CHANGE HAYWARD'S MIND. KOSTUK PROSELYTIZING EFFORT, IT SHOULD BE NOTED, CARRIED NO THREAT OF DISCHARGE.

7. ON SATURDAY MORNING, JUNE 11TH, 1966, KOSTUK WAS INFORMED BY AN EMPLOYEE, LIVINGSTON, THAT HAYWARD HAD MADE TO HIM THE STATEMENT PREVIOUSLY REFERRED TO, CONCERNING THE GOVERNMENT'S EXAMINATION OF HIS BOOKS. THERE WAS THUS INTERJECTED INTO THE AFFAIR A TOTALLY NEW ELEMENT.

8. ON MONDAY, JUNE 13TH, KOSTUK, IN THE PRESENCE OF THE OTHER EMPLOYEES, STATED THAT THERE WAS A FELLOW AMONG THEM WHO WAS MAKING BAD REMARKS. HE SAID HE WOULD GIVE HIM FIVE MINUTES AND THAT IF HE GOT OUT HE WOULD SAY NOTHING. KOSTUK LEFT THE MEETING AND RETURNED AFTER THE FIVE MINUTES WERE UP. HE THEN ASKED HAYWARD IF IT WAS TRUE THAT HE HAD SAID SOMETHING ABOUT INCOME TAX AND THAT HE WOULD HAVE HIM IN A PAINFUL POSITION. HAYWARD AT FIRST DENIED MAKING THE REMARKS, BUT WHEN CONFRONTED BY LIVINGSTON, WHO ASSERTED THAT THE STATEMENT HAD BEEN MADE TO HIM, HAYWARD ADMITTED THAT HE HAD SAID WHAT LIVINGSTON REPORTED, BUT ADDED THAT HE WAS ONLY REPEATING WHAT SOMEONE ELSE HAD TOLD HIM. HAYWARD WAS THEN TOLD BY KOSTUK THAT HE BEST GO. HE WAS PAID OFF AND GIVEN HIS INSURANCE BOOK.

9. WE ARE OF THE OPINION, NOTWITHSTANDING ANY OTHER INFERENCE THAT MIGHT BE DRAWN FROM KOSTUK'S CONDUCT ON FRIDAY, THAT HE HAD NO INTENTION OF DISMISSING HAYWARD AT THAT TIME, THAT IT WAS NOT UNTIL HAYWARD'S STATEMENT, WHICH HE FELT TO BE SLANDEROUS, WAS REPORTED TO HIM ON SATURDAY THAT HE DECIDED TO GET RID OF HIM. WE ARE NOT UNAWARE THAT EVIDENCE WAS GIVEN THAT A MEETING WAS HELD ON HAYWARD'S FARM ON THE SAME SATURDAY. THERE WAS NO EVIDENCE, HOWEVER, DIRECT OR INFERENTIAL, THAT KOSTUK KNEW OF THIS.

10. THE PRIMARY ONUS OF PROOF IN MATTERS SUCH AS THIS IS UPON THE COMPLAINANT. NEVERTHELESS, WHERE THE EVIDENCE WARRANTS AN EXPLANATION FROM THE RESPONDENT WITH RESPECT TO THE ACTION TAKEN, THE EXPLANATION GIVEN SHOULD BE SO REASONABLE AND EMBODY SUCH SUBSTANCE AS TO OBTAIN ANY INFERENCE THAT IT IS A MERE PRETEXT. WE ARE OF THE OPINION THAT THE WORDS UTTERED BY HAYWARD CARRY SUFFICIENT INNUENDO TO CAUSE A REASONABLE PERSON CONCERN AND TO MOVE HIM TO TAKE STEPS TO PREVENT ITS SPREAD.

11. ON A CONSIDERATION OF ALL THE EVIDENCE, WE ARE NOT SATISFIED THAT LLOYD HAYWARD WAS DISCHARGED BY BELL CITY FOUNDRY (BRANTFORD) LIMITED CONTRARY TO THE LABOUR RELATIONS ACT AND THE COMPLAINT IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFE: (August 19, 1966)

I DISSENT.

THE EVIDENCE AS OUTLINED IN THE MAJORITY DECISION IS THAT MR. KOSTUK, THE PRESIDENT AND GENERAL MANAGER OF THE COMPANY, DID ALL MANNER OF THINGS THAT ARE IN VIOLATION OF THE LABOUR RELATIONS ACT IN HIS ENDEAVOUR TO HAVE MR. LLOYD HAYWARD CHANGE HIS MIND ABOUT CONTINUING AS A UNION MEMBER.

ON JUNE 10TH MR. KOSTUK APPROACHED MR. HAYWARD AND SAID, "YOU AND ART SEARS ARE TRYING TO ORGANIZE A UNION, YOU FELLOWS WITHOUT TOO MUCH EDUCATION SHOULD NOT BE TRYING TO ORGANIZE". THE EVIDENCE IS THAT ALL THROUGH THAT DAY MR. KOSTUK CONTINUED TO RIDE MR. HAYWARD ABOUT THE UNION. HE ENDEAVOURED BY MEANS OF SARCASM AND RIDICULE TO BELITTLE HAYWARD, AND ALL BECAUSE HAYWARD WAS EXERCISING HIS LEGAL RIGHT TO BELONG TO A UNION.

THE EVIDENCE OF MR. LIVINGSTON CLEARLY DEMONSTRATED THAT HE WAS A "LOYAL" EMPLOYEE AND THAT HE HAD SOUGHT OUT INFORMATION FROM BOTH HAYWARD AND SEARS, WHICH HE PROMPTLY REPORTED TO MR. KOSTUK. PART OF THIS UNDERCOVER WORK UNDERTAKEN BY MR. LIVINGSTON BROUGHT FORTH THE STATEMENT FROM MR. HAYWARD, THAT WHEN THE UNION GOT IN, THEY WOULD HAVE KOSTUK BY THE - - - AND THAT HIS BOOKS WOULD BE CHECKED FOR INCOME TAX PURPOSES. THE MAJORITY OF THE BOARD HAVE CLUNG TO THIS ISOLATED STATEMENT TO FIND JUSTIFICATION FOR THE DISCHARGE OF MR. HAYWARD. THE STATEMENT TO THIS EFFECT IS ADMITTED BY MR. HAYWARD, BUT THIS STATEMENT MADE AT A TIME OF INTENSE ANTI-UNION ACTIVITY ON THE PART OF MR. KOSTUK, AT A TIME WHEN HE (KOSTUK) WAS RESORTING TO SARCASM, RIDICULE AND BULLYING TACTICS TO DESTROY THE UNION, WAS REALLY LESS THAN COULD BE EXPECTED IN THIS KIND OF ATMOSPHERE.

I COULD NOT AGREE WITH MY COLLEAGUES ON THE BOARD THAT THIS ONE STATEMENT CAN BE TAKEN OUT OF ALL THE OTHER THINGS THAT WERE SAID, MAGNIFIED OUT OF ALL PROPORTION AND USED TO JUSTIFY MR. KOSTUK'S DISMISSAL OF MR. HAYWARD. THE EVIDENCE OF MR. KOSTUK'S BEHAVIOUR AT THIS PERIOD, PLUS HIS WHOLLY UNSATISFACTORY PERFORMANCE AS A WITNESS BEFORE THE BOARD, DOES NOT TIE IN WITH THE IMPLIED SUGGESTION THAT HIS SENSIBILITIES WERE INJURED BY THIS ONE STATEMENT BY AN EMPLOYEE FOR WHOM HE APPARENTLY HAD LITTLE RESPECT EITHER AS A HUMAN BEING OR AS AN INFLUENTIAL PERSON AMONG OTHER EMPLOYEES.

IN VIEW OF ALL OF THE EVIDENCE BEFORE THE BOARD OF MR. KOSTUK'S ANTI-UNION ACTIVITIES AND HIS EFFORTS TO HAVE MR. HAYWARD CEASE HIS MEMBERSHIP IN THE UNION, I WOULD HAVE FOUND THAT MR. HAYWARD WAS DISMISSED FOR UNION ACTIVITY AND WOULD HAVE ORDERED HIS REINSTATEMENT.

11888-66-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. BELL CITY FOUNDRY (BRANTFORD LIMITED) (RESPONDENT).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, C. ANDERSON AND R. WHITE
FOR THE APPLICANT, P. A. BALLACHEY AND WILLIAM KOSTUK FOR THE RESPONDENT.

DECISION OF THE BOARD: (August 4, 1966)

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. THE AGGRIEVED, ARTHUR SEARS, WAS A MOULDER IN THE EMPLOY OF THE RESPONDENT AND WAS DISMISSED ON THE 9TH OF JUNE 1966. IT IS ALLEGED THAT HE HAS BEEN DEALT WITH CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT.

2. THE EMPLOYMENT HISTORY OF SEARS WITH THE RESPONDENT IS UNIQUE. HE WAS FIRST EMPLOYED BY THE RESPONDENT IN 1956 AND WORKED UNTIL JUNE OF 1959 WHEN HE LEFT OF HIS OWN ACCORD. HE WAS REHIRED IN 1960 AND REMAINED UNTIL 1963. HE AGAIN WORKED FOR THE RESPONDENT DURING THE PERIODS APRIL 1964 TO OCTOBER 1964 AND MARCH 1965 TO SEPTEMBER 1965. EACH TIME HE QUIT THE JOB OF HIS OWN ACCORD. SEARS STATED THAT HE LEFT THE COMPANY ON THE FOREGOING OCCASIONS BECAUSE HIS EMPLOYER HAD CRITICIZED HIS WORK.

3. FOLLOWING SEARS' DEPARTURE IN SEPTEMBER 1965 HE WENT TO WORK IN ANOTHER FOUNDRY WHERE HE SUSTAINED AN INJURY TO HIS BACK. AS A RESULT, HE DREW WORKMEN'S COMPENSATION. IN EARLY 1966 SEARS APPLIED FOR WORK AT BELL CITY FOUNDRY AND WAS TOLD HE WOULD BE HIRED UPON CONDITION THAT THE REPRESENTATIVE OF THE WORKMEN'S COMPENSATION BOARD WOULD GIVE THE EMPLOYER A LETTER STATING THAT BELL CITY FOUNDRY WOULD NOT BE LIABLE FOR SEARS BACK INJURY. A LETTER TO THIS EFFECT WAS GIVEN TO BELL CITY FOUNDRY AND SEARS WAS HIRED BY WILLIAM KOSTUK, PRESIDENT AND GENERAL MANAGER OF THAT COMPANY. HE COMMENCED TO WORK ON OR ABOUT JANUARY 31ST, 1966. HE WORKED FOR 7 TO 8 HOURS THE FIRST DAY. HE HAD TO QUIT AFTER HAVING WORKED ONLY ABOUT 2 HOURS ON THE SECOND DAY BECAUSE OF SORENESS IN HIS BACK. SEARS WAS NEXT HIRED ON OR ABOUT APRIL 25TH, 1966 AND CONTINUED TO WORK FOR BELL CITY FOUNDRY UNTIL HIS DISCHARGE ON JUNE 9TH, 1966.

4. ABOUT A WEEK BEFORE HIS DISCHARGE, SEARS, TOGETHER WITH FELLOW EMPLOYEES JOE LICHOTA, LLOYD HAYWARD AND ONE OTHER IDENTIFIED ONLY AS "ALBERTA", MET IN A HOTEL AND DISCUSSED THE QUESTION OF GETTING A UNION AT THE BELL CITY FOUNDRY PLANT. AS A RESULT OF THIS MEETING SEARS ARRANGED ON JUNE 6TH, WITH A MR. ANDERSON OF THE U.A.W., TO HOLD AN ORGANIZATION MEETING AT THE UNION HALL AFTER WORK ON JUNE 8TH, 1966. SEARS NOTIFIED THE EMPLOYEES IN THE SHOP OF THIS MEETING WHICH WAS TO BE HELD RIGHT AFTER WORK ON THE 8TH OF JUNE. SOME TEN EMPLOYEES ATTENDED THE MEETING AND JOINED THE UNION.

5. THE FOLLOWING MORNING, JUNE 9TH, WHEN SEARS CAME TO WORK ONE LIVINGSTON, A FELLOW EMPLOYEE, ASKED HIM ABOUT THE MEETING. SEARS TOLD HIM WHAT HAD OCCURRED

6. IT IS SIGNIFICANT THAT THE SAME LIVINGSTON APPEARED AS A WITNESS CALLED BY THE RESPONDENT TO GIVE VERY DAMAGING EVIDENCE WITH RESPECT TO SEARS' WORK PERFORMANCE, CONDUCT AND INFLUENCE UPON FELLOW EMPLOYEES. IT ALSO DEVELOPED THAT

LIVINGSTON DIVULGED TO KOSTUK OTHER VITAL INFORMATION CONCERNING SEARS AND OTHER EMPLOYEES.

7. THROUGHOUT THE COURSE OF THAT MORNING FELLOW EMPLOYEES KEPT APPROACHING SEARS AT HIS MACHINE TO MAKE INQUIRIES ABOUT THE UNION. MR. KOSTUK WAS SEEN TO BE OBSERVING THIS AND, THE EVIDENCE IS, HE SPENT MORE TIME IN THE PLANT THAT MORNING THAN WAS NORMAL.

8. SEARS' VERSION OF WHAT HAPPENED LATER THAT DAY IS AS FOLLOWS: AT ABOUT 2 P.M. MR. KOSTUK CAME TO SEARS' MACHINE AND TOLD HIM HE WANTED TO SEE HIM IN THE OFFICE AT 2:30 P.M. SEARS REPORTED TO THE OFFICE AND KOSTUK TOLD HIM HE WOULD HAVE TO LET HIM GO. ON SEARS ASKING FOR A REASON, KOSTUK TOLD HIM THAT THE COMPENSATION BOARD INSPECTORS HAD BEEN AT THE PLANT AND SAID THAT NO ONE COULD WORK THERE WITH A SORE BACK. HE WAS INSTRUCTED BY KOSTUK THAT HE WAS NOT TO SPEAK TO ANYONE ON HIS WAY OUT THROUGH THE PLANT BUT NO REASON WAS GIVEN FOR SUCH INSTRUCTIONS.

9. THE EVIDENCE ADDUCED BY THE RESPONDENT WAS TO THE EFFECT THAT SEARS' WORK PERFORMANCE, PRODUCTION, AND GENERAL ATTITUDE WERE SUCH AS TO JUSTIFY HIS DISMISSAL. THE EVIDENCE WAS OFFERED BY FELLOW EMPLOYEES, INCLUDING LIVINGSTON, AS NOTED ABOVE, AND BY KOSTUK HIMSELF. IT APPEARS QUITE CLEAR FROM THIS EVIDENCE THAT SEARS LEFT A GREAT DEAL TO BE DESIRED AS A COMPETENT AND WILLING WORKMAN. HIS CONDUCT AND ATTITUDES WERE CHARACTERIZED BY PERIODIC INDOLENCE AND CARELESSNESS ACCOMPANIED BY AN ARROGANCE APPARENTLY ENCOURAGED BY THE LACK OF SKILLED WORKERS IN THE INDUSTRY AND THE CONSEQUENT EASE OF OBTAINING EMPLOYMENT ELSEWHERE IF THE WORST CAME TO THE WORST. KOSTUK'S EVIDENCE INDICATED THAT WHILE HE HAD COMPLAINED TO SEARS ABOUT THIS CONDUCT HE FELT THAT HE HAD TO HANDLE EMPLOYEES "WITH KID GLOVES" FOR FEAR THAT THEY MIGHT QUIT, AS SEARS HAD DONE A NUMBER OF TIMES. THIS CONDUCT WHICH MUST BE DEEMED TO BE NORMALLY UNACCEPTABLE BEHAVIOUR ON THE PART OF AN EMPLOYEE WAS TOLERATED AND ENDURED, WITH BUT MILD REMONSTRANCES, BY KOSTUK AND BELL CITY FOUNDRY THROUGHOUT THE COURSE OF SEARS' EMPLOYMENT FROM HIS HIRING IN APRIL TO HIS DISCHARGE IN JUNE. SUDDENLY, WE ARE ASKED TO BELIEVE, THE PREVIOUSLY ACCEPTED CONDUCT BECAME UNACCEPTABLE AND SEARS WAS DISCHARGED - THE DISCHARGE COMING THE DAY FOLLOWING A UNION ORGANIZATION MEETING ARRANGED BY SEARS.

10. IN THE ABSENCE OF ANY WARNING TO SEARS THAT A CONTINUATION OF SUCH BEHAVIOUR WOULD LEAD TO DISCHARGE OR EVIDENCE OF THE OCCURRENCE, IMMEDIATE TO THE DATE OF HIS DISCHARGE, OF SOME ENORMITY OF MISBEHAVIOUR EXCEEDING THAT WHICH HAD BEEN ALLOWED TO PASS PREVIOUSLY, IT IS IMPOSSIBLE TO ACCEPT THE PROPOSITION THAT SUCH CONDUCT WAS INDEED THE CAUSE OF DISCHARGE. IT IS TRUE THAT KOSTUK STATED THAT DURING THE LAST FEW DAYS SEARS WAS THERE, HE WAS WORKING ON A MOTOR HEAD AND THAT HE CREATED AN UNUSUAL, IN KOSTUK'S ESTIMATION, AMOUNT OF SCRAP. KOSTUK SAID THAT SEVERAL TIMES HE TOOK THE WORK BACK TO SEARS. HE SAID, "YOU COULD NOT TALK TO HIM. I SAID TO HIM, 'YOU WILL HAVE TO PRODUCE BETTER QUALITY THAN THIS'. THAT'S ALL I SAID. THIS WAS TWO OR THREE DAYS BEFORE WE LET HIM GO." THIS WOULD APPEAR TO BE NOTHING MORE THAN AN APPLICATION OF THE KID GLOVE POLICY PREVIOUSLY REFERRED TO BY KOSTUK AND APPEARS TO HAVE BEEN MORE OF A PLEA THAN A THREAT.

11. KOSTUK'S EVIDENCE AS TO WHAT TOOK PLACE AT THE ACTUAL DISCHARGE INTERVIEW IS SOMEWHAT THE SAME AS SEARS'. WHEN SEARS APPEARED IN THE OFFICE, KOSTUK TESTIFIED, HE SAID "ART, I WILL HAVE TO LET YOU GO. THE LAST TIME YOU WORKED HERE

I PHONED AND SAID YOU QUIT, NOW I HIRED YOU AGAIN AND DID NOT LET THEM KNOW YOU WERE HERE. WE ARE GOING TO HAVE TROUBLE WITH YOUR BACK." THE "THEM" TO WHOM KOSTUK REFERRED WAS THE WORKMEN'S COMPENSATION BOARD. AT A MEETING OF EMPLOYEES HELD ON MONDAY JUNE 13TH, 1966, KOSTUK ANNOUNCED TO ALL THAT SEARS HAD BEEN DISCHARGED BECAUSE OF HIS SORE BACK. NEITHER AT THIS TIME NOR AT THE TIME OF THE DISCHARGE INTERVIEW WAS THE SLIGHTEST ALLUSION MADE TO SEARS' WORK RECORD.

12. KOSTUK'S EVIDENCE WAS THAT AT THE TIME OF SEARS' DISCHARGE ON JUNE 9TH, 1966, HE WAS NOT AWARE OF ANY UNION ACTIVITY IN THE PLANT INVOLVING SEARS.

13. IN REVIEWING KOSTUK'S TESTIMONY ON THE WHOLE, THE MOST CHARITABLE THING THAT CAN BE SAID ABOUT IT IS THAT IT WOULD HAVE BEEN BETTER FOR HIM HAD HE NOT APPEARED IN THE BOX. THE MANNER IN WHICH HE GAVE HIS EVIDENCE WAS SUCH AS TO DESTROY ANY POSSIBILITY OF ITS ACCEPTANCE AS FACTUAL AND CREDIBLE. THIS IS PARTICULARLY SO WITH RESPECT TO THE POINT AS TO WHEN HE BECAME AWARE OF SEARS' UNION ACTIVITIES.

14. ON THE BASIS OF ALL THE EVIDENCE BUT KEEPING IN MIND ESPECIALLY KOSTUK'S MOST EXTRAORDINARY RESPONSES TO QUESTIONS HAVING TO DO WITH THE MATTER OF HIS FIRST KNOWLEDGE OF SEARS' INVOLVEMENT IN THE ORGANIZATION OF THE UNION, WE REJECT KOSTUK'S EVIDENCE THAT HE KNEW OF THIS ONLY AFTER SEARS HAD BEEN DISCHARGED. IT IS QUITE EVIDENT THAT HE KNEW SEARS WAS ONE OF THE LEADING LIGHTS IN THE UNION ORGANIZATION CAMPAIGN AND IT IS ALSO QUITE EVIDENT THAT HE WAS OPPOSED TO THE ENTRY OF THE UNION INTO THE PLANT AND THAT HE ACTED AGAINST SEARS IN THE HOPE OF DESTROYING THE WHOLE MOVEMENT. THE IMPLAUSIBLE REASON GIVEN TO SEARS FOR HIS DISCHARGE IS NOT CONSISTENT WITH THE EVIDENCE AND ARGUMENT OFFERED ON THAT POINT AT THE HEARING AND WE FIND THAT NEITHER REPRESENTS THE TRUE REASON FOR SEARS' DISCHARGE.

15. IN VIEW OF THE FOREGOING THE BOARD IS SATISFIED THAT ARTHUR SEARS WAS DISCHARGED FROM HIS EMPLOYMENT CONTRARY TO THE LABOUR RELATIONS ACT AND ITS DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:

- (1) THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY ARTHUR SEARS IN THE SAME POSITION AS HE HELD AT THE TIME OF HIS DISCHARGE OR IN A POSITION EQUIVALENT THERETO WITH THE SAME WAGES AND EMPLOYMENT BENEFITS HE WAS RECEIVING AT THE TIME OF HIS DISCHARGE AND WITH FULL COMPENSATION FOR ALL WAGES LOST FROM THE 13TH OF JUNE, 1966, TO THE DATE OF REINSTATEMENT LESS THE AMOUNT OF WAGES EARNED BY HIM DURING THAT PERIOD.
- (2) THE COMPLAINANT AND THE RESPONDENT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF COMPENSATION PAYABLE. IN DEFAULT OF AGREEMENT AS TO THE AMOUNT OF COMPENSATION TO BE PAID WITHIN TEN DAYS OF THE RELEASE OF THIS DETERMINATION OR SUCH FURTHER PERIOD AS THE PARTIES MAY AGREE UPON THE AMOUNT OF SUCH COMPENSATION PAYABLE WILL BE DETERMINED BY THE BOARD UPON THE

MOTION OF EITHER PARTY FOR A FURTHER HEARING
FOR THAT PURPOSE.

11970-66-U: RAYMOND LOYER (COMPLAINANT) V. NATCHO NANEFF, CARRYING ON BUSINESS
AS KALLA MANUFACTURING & HAULAGE COMPANY (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY
AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: EDWARD JAMES CONROY FOR THE COMPLAINANT,
LLOYD J. VALIN, Q.C., AND NATCHO NANEFF FOR THE RESPONDENT.

DECISION OF THE BOARD: (August 17, 1966)

1. THIS A COMPLAINT FOR RELIEF PURSUANT TO THE PROVISIONS OF SECTION 65
OF THE LABOUR RELATIONS ACT.
2. IMMEDIATELY PRIOR TO THE DISCHARGE OF THE COMPLAINANT THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938,
GENERAL TRUCK DRIVERS WAS ENGAGED IN A CAMPAIGN TO ORGANIZE THE EMPLOYEES OF
THE RESPONDENT AT SUDBURY. ON MONDAY, JUNE 27TH, 1966, THE COMPLAINANT WAS
DISCHARGED BY THE RESPONDENT ALONG WITH TWO OTHER EMPLOYEES, ROMEO ROUSSEAU
AND JOHN VILLENEUVE.
3. THE TESTIMONY OF THE RESPONDENT'S WITNESSES CONCERNING THE REASONS FOR
THE DISCHARGES SEEMED PLAUSIBLE WHEN VIEWED IN ISOLATION FROM THE REST OF THE
EVIDENCE IN THIS CASE, HOWEVER THE EVIDENCE CALLED BY THE COMPLAINANT TENDED
TO SHOW THAT OFFICIALS OF THE RESPONDENT HAD MADE INQUIRIES CONCERNING THE
IDENTITY OF THE EMPLOYEES WHO JOINED THE UNION. IN ADDITION, THE COMPLAINANT
CALLED AS A WITNESS MRS. RUTH JACOBSON WHO WAS THE ESTRANGED WIFE OF TOM
JACOBSON, A FOREMAN OF THE RESPONDENT. APPARENTLY, MRS. JACOBSON AND HER
HUSBAND HAVE LIVED SEPARATE AND APART FOR A PERIOD OF THREE YEARS. MR.
JACOBSON SEES HIS WIFE REGULARLY WHEN HE CALLS AT HER RESIDENT TO VISIT WITH
THEIR CHILDREN. APPARENTLY, MR. AND MRS. JACOBSON HAVE CONTENTED THEMSELVES
WITH THIS ARRANGEMENT AND THERE WAS NOTHING IN THE EVIDENCE WHICH WOULD LEAD
THE BOARD TO FIND THAT ANY ANIMOSITY EXISTS BETWEEN THE SPOUSES. ON THE
CONTRARY MRS. JACOBSON TESTIFIED THAT HER RELATIONSHIP WITH HER HUSBAND IS
SATISFACTORY.
4. MRS. JACOBSON TESTIFIED THAT ON SUNDAY, JUNE 26TH, WHICH WAS THE DATE
IMMEDIATELY PRIOR TO THE DISCHARGES, HER HUSBAND CALLED AT HER HOME TO PICK
UP THEIR CHILDREN FOR HIS WEEKLY VISIT. WHILE HE WAS THERE MR. JACOBSON
INFORMED HIS WIFE THAT THREE EMPLOYEES WERE GOING TO BE FIRED THE FOLLOWING
DAY TO PUT A SCARE INTO THE MEN IN ORDER TO STOP THE UNION ACTIVITY AND
"ROMEO WAS ONE OF THEM". MRS. JACOBSON STATED THAT SHE WAS ACQUAINTED WITH
ROMEO (IDENTIFIED AS ROMEO ROUSSEAU) ALTHOUGH SHE DID NOT KNOW HIS SURNAME AND
THAT RAYMOND LOYER AND JOHN VILLENEUVE WERE STRANGERS TO HER. MRS. JACOBSON
FURTHER TESTIFIED THAT HER HUSBAND ALSO INQUIRED AFTER HER BROTHER-IN-LAW JOHN
DESROCHES WHO WAS ALSO EMPLOYED BY THE RESPONDENT. DURING CROSS-EXAMINATION,
WHEN ASKED HOW THE UNION BECAME AWARE OF HER CONVERSATION WITH HER HUSBAND,
MRS. JACOBSON TESTIFIED THAT SHE DID NOT KNOW BUT THAT SHE ASSUMED THAT MR.
DESROCHES HAD INFORMED THE UNION BECAUSE SHE HAD MENTIONED HER HUSBAND'S
REMARKS TO MR. DESROCHES. WHILE COUNSEL FOR THE RESPONDENT SUBJECTED MRS.

JACOBSON TO VIGOROUS CROSS-EXAMINATION HER TESTIMONY WAS IN NO WAY DISCREDITED.

5. TOM JACOBSON WAS CALLED AS A WITNESS BY THE RESPONDENT AND WHEN QUESTIONED CONCERNING THE TESTIMONY OF HIS WIFE MR. JACOBSON STATED THAT HE HAD PICKED UP HIS CHILDREN AT HIS WIFE'S PREMISES ON SUNDAY, JUNE 26TH, BUT HE DID NOT "RECALL THE CONVERSATION" WITH HIS WIFE ABOUT THE DISMISSAL OF THE THREE PERSONS THE FOLLOWING DAY. MR. JACOBSON TESTIFIED THAT HE DID NOT RECALL ANYTHING ABOUT THE CONVERSATION AND WAS NOT AWARE THAT ANY OF THE THREE PERSONS WERE MEMBERS OF THE UNION.

6. IT WOULD APPEAR FROM ALL THE EVIDENCE THAT APART FROM CERTAIN INQUIRIES MADE BY OFFICIALS OF THE RESPONDENT CONCERNING MEMBERSHIP IN THE UNION, THE TESTIMONY OF MRS. JACOBSON IS THE KEY EVIDENCE IN THIS MATTER. WHILE COUNSEL FOR THE RESPONDENT VEHEMENTLY ARGUED THAT THE BOARD SHOULD NOT ACCEPT THE TESTIMONY OF MRS. JACOBSON THE BOARD FINDS THAT THERE IS NOTHING IN HER TESTIMONY OR THE MANNER IN WHICH SHE GAVE HER EVIDENCE WHICH WOULD CAUSE THE BOARD TO DOUBT THE VERACITY OF HER STATEMENTS. WHEN MRS. JACOBSON'S TESTIMONY IS CONTRASTED WITH THE EQUIVOCAL DENIAL OF HER HUSBAND THE BOARD FINDS THAT HER TESTIMONY IS TO BE PREFERRED. IF MR. JACOBSON HAD NOT INFORMED HIS WIFE OF THE IMPENDING DISCHARGES AND HAD NOT THE DISCHARGES BEEN FOR UNION ACTIVITY, IT IS REASONABLE TO ASSUME THAT MR. JACOBSON WOULD NOT ONLY HAVE BEEN SURPRISED BY SUCH STATEMENTS BUT WOULD LIKELY HAVE BEEN AGITATED BY SUCH A FALSEHOOD. NOT ONLY WAS THERE NO SUGGESTION OF SURPRISE OR AGITATION OVER THE STATEMENTS ALLEGED TO HAVE BEEN MADE BY HIM TO HIS WIFE BUT HE DID NOT EVEN DENY THAT THEY WERE MADE BY HIM. MR. JACOBSON SIMPLY STATED THAT HE "DID NOT RECALL" MAKING THESE STATEMENTS. WE ARE OF OPINION THAT THIS REPLY IS NOT ONE THAT A REASONABLE PERSON WOULD MAKE IN SUCH CIRCUMSTANCES. FOR THESE REASONS THE BOARD ACCEPTS THE TESTIMONY OF MRS. JACOBSON.

7. HAVING REGARD TO ALL THE EVIDENCE AND ESPECIALLY THE EVIDENCE OF MRS. JACOBSON THE BOARD IS SATISFIED THAT RAYMOND LOYER WAS DISCHARGED BY THE RESPONDENT ON JUNE 27TH, 1966 CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT.

8. THE COMPLAINANT OFFERED NO EVIDENCE CONCERNING LOSS OF EARNINGS SUSTAINED BY HIM AS A RESULT OF THE DISCHARGE AND THE BOARD MAKES NO FINDING WITH RESPECT TO SUCH LOSS BETWEEN THE DATE OF HIS DISCHARGE AND AUGUST 12TH, 1966 THE DATE OF THE HEARING IN THIS MATTER.

9. THE BOARD THEREFORE DETERMINES THAT:

- (A) RAYMOND LOYER SHALL BE REINSTATED FORTHWITH IN THE POSITION HE HELD AT THE TIME OF HIS DISCHARGE;
- (B) THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF THE LOSS OF EARNINGS THAT RAYMOND LOYER SUSTAINED BY REASON OF HIS HAVING BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN AUGUST 12TH, 1966 AND THE DATE OF HIS REINSTATEMENT; AND
- (C) IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO IN PARAGRAPH (B) HEREOF

WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE AMOUNT TO BE PAID TO RAYMOND LOYER FOR LOSS OF EARNINGS SUSTAINED BY REASON OF HIS HAVING BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN AUGUST 12TH, 1966 AND THE DATE OF HIS REINSTATEMENT.

11971-66-U: ROMEO ROUSSEAU (COMPLAINANT) v. NATCHO NANEFF, CARRYING ON BUSINESS AS KALLA MANUFACTURING & HAULAGE COMPANY (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: EDWARD JAMES CONROY FOR THE COMPLAINANT,
LLOYD J. VALIN, Q.C., AND NATCHO NANEFF FOR THE RESPONDENT.

DECISION OF THE BOARD: (AUGUST 17, 1966)

1. THIS IS A COMPLAINT FOR RELIEF PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT.
2. IMMEDIATELY PRIOR TO THE DISCHARGE OF THE COMPLAINANT THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 926, GENERAL TRUCK DRIVERS WAS ENGAGED IN A CAMPAIGN TO ORGANIZE THE EMPLOYEES OF THE RESPONDENT AT SUDBURY. ON MONDAY, JUNE 27TH, 1966, THE COMPLAINANT WAS DISCHARGED BY THE RESPONDENT ALONG WITH TWO OTHER EMPLOYEES, RAYMOND LOYER AND JOHN VILLENEUVE.
3. THE TESTIMONY OF THE RESPONDENT'S WITNESSES CONCERNING THE REASONS FOR THE DISCHARGES SEEMED PLAUSIBLE WHEN VIEWED IN ISOLATION FROM THE REST OF THE EVIDENCE IN THIS CASE, HOWEVER THE EVIDENCE CALLED BY THE COMPLAINANT TENDED TO SHOW THAT OFFICIALS OF THE RESPONDENT HAD MADE INQUIRIES CONCERNING THE IDENTITY OF THE EMPLOYEES WHO JOINED THE UNION. IN ADDITION, THE COMPLAINANT CALLED AS A WITNESS MRS. RUTH JACOBSON WHO WAS THE ESTRANGED WIFE OF TOM JACOBSON, A FOREMAN OF THE RESPONDENT. APPARENTLY, MRS. JACOBSON AND HER HUSBAND HAVE LIVED SEPARATE AND APART FOR A PERIOD OF THREE YEARS. MR. JACOBSON SEES HIS WIFE REGULARLY WHEN HE CALLS AT HER RESIDENCE TO VISIT WITH THEIR CHILDREN. APPARENTLY, MR. AND MRS. JACOBSON HAVE CONTENTED THEMSELVES WITH THIS ARRANGEMENT AND THERE WAS NOTHING IN THE EVIDENCE WHICH WOULD LEAD THE BOARD TO FIND THAT ANY ANIMOSITY EXISTS BETWEEN THE SPOUSES. ON THE CONTRARY MRS. JACOBSON TESTIFIED THAT HER RELATIONSHIP WITH HER HUSBAND IS SATISFACTORY.
4. MRS. JACOBSON TESTIFIED THAT ON SUNDAY, JUNE 26TH, WHICH WAS THE DATE IMMEDIATELY PRIOR TO THE DISCHARGES, HER HUSBAND CALLED AT HER HOME TO PICK UP THEIR CHILDREN FOR HIS WEEKLY VISIT. WHILE HE WAS THERE MR. JACOBSON INFORMED HIS WIFE THAT THREE EMPLOYEES WERE GOING TO BE FIRED THE FOLLOWING DAY TO PUT

A SCARE INTO THE MEN IN ORDER TO STOP THE UNION ACTIVITY AND "ROMEO WAS ONE OF THEM". MRS. JACOBSON STATED THAT SHE WAS ACQUAINTED WITH ROMEO (IDENTIFIED AS ROMEO ROUSSEAU) ALTHOUGH SHE DID NOT KNOW HIS SURNAME AND THAT RAYMOND LOYER AND JOHN VILLENEUVE WERE STRANGERS TO HER. MRS. JACOBSON FURTHER TESTIFIED THAT HER HUSBAND ALSO INQUIRED AFTER HER BROTHER-IN-LAW JOHN DESROCHES WHO WAS ALSO EMPLOYED BY THE RESPONDENT. DURING CROSS-EXAMINATION, WHEN ASKED HOW THE UNION BECAME AWARE OF HER CONVERSATION WITH HER HUSBAND, MRS. JACOBSON TESTIFIED THAT SHE DID NOT KNOW BUT THAT SHE ASSUMED THAT MR. DESROCHES HAD INFORMED THE UNION BECAUSE SHE HAD MENTIONED HER HUSBAND'S REMARKS TO MR. DESROCHES. WHILE COUNSEL FOR THE RESPONDENT SUBJECTED MRS. JACOBSON TO VIGOROUS CROSS-EXAMINATION HER TESTIMONY WAS IN NO WAY DISCREDITED.

5. TOM JACOBSON WAS CALLED AS A WITNESS BY THE RESPONDENT AND WHEN QUESTIONED CONCERNING THE TESTIMONY OF HIS WIFE MR. JACOBSON STATED THAT HE HAD PICKED UP HIS CHILDREN AT HIS WIFE'S PREMISES ON SUNDAY, JUNE 26TH, BUT HE DID NOT "RECALL THE CONVERSATION" WITH HIS WIFE ABOUT THE DISMISSAL OF THE THREE PERSONS THE FOLLOWING DAY. MR. JACOBSON TESTIFIED THAT HE DID NOT RECALL ANYTHING ABOUT THE CONVERSATION AND WAS NOT AWARE THAT ANY OF THE THREE PERSONS WERE MEMBERS OF THE UNION.

6. IT WOULD APPEAR FROM ALL THE EVIDENCE THAT APART FROM CERTAIN INQUIRIES MADE BY OFFICIALS OF THE RESPONDENT CONCERNING MEMBERSHIP IN THE UNION, THE TESTIMONY OF MRS. JACOBSON IS THE KEY EVIDENCE IN THIS MATTER. WHILE COUNSEL FOR THE RESPONDENT VEHEMENTLY ARGUED THAT THE BOARD SHOULD NOT ACCEPT THE TESTIMONY OF MRS. JACOBSON THE BOARD FINDS THAT THERE IS NOTHING IN HER TESTIMONY OR THE MANNER IN WHICH SHE GAVE HER EVIDENCE WHICH WOULD CAUSE THE BOARD TO DOUBT THE VERACITY OF HER STATEMENTS. WHEN MRS. JACOBSON'S TESTIMONY IS CONTRASTED WITH THE EQUIVOCAL DENIAL OF HER HUSBAND THE BOARD FINDS THAT HER TESTIMONY IS TO BE PREFERRED. IF MR. JACOBSON HAD NOT INFORMED HIS WIFE OF THE IMPENDING DISCHARGES AND HAD NOT THE DISCHARGES BEEN FOR UNION ACTIVITY, IT IS REASONABLE TO ASSUME THAT MR. JACOBSON WOULD NOT ONLY HAVE BEEN SURPRISED BY SUCH STATEMENTS BUT WOULD LIKELY HAVE BEEN AGITATED BY SUCH A FALSEHOOD. NOT ONLY WAS THERE NO SUGGESTION OF SURPRISE OR AGITATION OVER THE STATEMENTS ALLEGED TO HAVE BEEN MADE BY HIM TO HIS WIFE BUT HE DID NOT EVEN DENY THAT THEY WERE MADE BY HIM. MR. JACOBSON SIMPLY STATED THAT HE "DID NOT RECALL" MAKING THESE STATEMENTS. WE ARE OF OPINION THAT THIS REPLY IS NOT ONE THAT A REASONABLE PERSON WOULD MAKE IN SUCH CIRCUMSTANCES. FOR THESE REASONS THE BOARD ACCEPTS THE TESTIMONY OF MRS. JACOBSON.

7. HAVING REGARD TO ALL THE EVIDENCE AND ESPECIALLY THE EVIDENCE OF MRS. JACOBSON THE BOARD IS SATISFIED THAT ROMEO ROUSSEAU WAS DISCHARGED BY THE RESPONDENT ON JUNE 27TH, 1966 CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT.

8. THE COMPLAINANT OFFERED NO EVIDENCE CONCERNING LOSS OF EARNINGS SUSTAINED BY HIM AS A RESULT OF THE DISCHARGE AND THE BOARD MAKES NO FINDING WITH RESPECT TO SUCH LOSS BETWEEN THE DATE OF HIS DISCHARGE AND AUGUST 12TH, 1966 THE DATE OF THE HEARING IN THIS MATTER.

9. THE BOARD THEREFORE DETERMINES THAT:

(A) ROMEO ROUSSEAU SHALL BE REINSTATED FORTHWITH

IN THE POSITION HE HELD AT THE TIME OF HIS DISCHARGE;

- (B) THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF THE LOSS OF EARNINGS THAT ROMEO ROUSSEAU SUSTAINED BY REASON OF HIS HAVING BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN AUGUST 12TH, 1966 AND THE DATE OF HIS REINSTATEMENT; AND
- (C) IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO IN PARAGRAPH (B) HEREOF WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE AMOUNT TO BE PAID TO ROMEO ROUSSEAU FOR LOSS OF EARNINGS SUSTAINED BY REASON OF HIS HAVING BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN AUGUST 12TH, 1966 AND THE DATE OF HIS REINSTATEMENT.

11972-66-U: JOHN VILLENEUVE (COMPLAINANT) v. NATCHO NANEFF, CARRYING ON BUSINESS AS KALLA MANUFACTURING & HAULAGE COMPANY (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: EDWARD JAMES CONROY FOR THE COMPLAINANT, LLOYD J. VALIN, Q.C., AND NATCHO NANEFF FOR THE RESPONDENT.

DECISION OF THE BOARD: (AUGUST 17, 1966)

1. THIS IS A COMPLAINT FOR RELIEF PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT.
2. IMMEDIATELY PRIOR TO THE DISCHARGE OF THE COMPLAINANT THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938, GENERAL TRUCK DRIVERS WAS ENGAGED IN A CAMPAIGN TO ORGANIZE THE EMPLOYEES OF THE RESPONDENT AT SUDBURY. ON MONDAY, JUNE 27TH, 1966, THE COMPLAINANT WAS DISCHARGED BY THE RESPONDENT ALONG WITH TWO OTHER EMPLOYEES, ROMEO ROUSSEAU AND RAYMOND LOYER.
3. THE TESTIMONY OF THE RESPONDENT'S WITNESSES CONCERNING THE REASONS FOR THE DISCHARGES SEEMED PLAUSIBLE WHEN VIEWED IN ISOLATION FROM THE REST OF THE EVIDENCE IN THIS CASE, HOWEVER THE EVIDENCE CALLED BY THE COMPLAINANT TENDED TO SHOW THAT OFFICIALS OF THE RESPONDENT HAD MADE INQUIRIES CONCERNING THE IDENTITY OF THE EMPLOYEES WHO JOINED THE UNION. IN ADDITION, THE COMPLAINT CALLED AS A WITNESS MRS. RUTH JACOBSON WHO WAS THE ESTRANGED WIFE OF TOM JACOBSON, A FOREMAN OF THE RESPONDENT. APPARENTLY, MRS. JACOBSON AND HER HUSBAND HAVE LIVED SEPARATE AND APART FOR A PERIOD OF THREE YEARS. MR. JACOBSON

SEES HIS WIFE REGULARLY WHEN HE CALLS AT HER RESIDENCE TO VISIT WITH THEIR CHILDREN. APPARENTLY, MR. AND MRS. JACOBSON HAVE CONTENTED THEMSELVES WITH THIS ARRANGEMENT AND THERE WAS NOTHING IN THE EVIDENCE WHICH WOULD LEAD THE BOARD TO FIND THAT ANY ANIMOSITY EXISTS BETWEEN THE SPOUSES. ON THE CONTRARY MRS. JACOBSON TESTIFIED THAT HER RELATIONSHIP WITH HER HUSBAND IS SATISFACTORY.

4. MRS. JACOBSON TESTIFIED THAT ON SUNDAY, JUNE 26TH, WHICH WAS THE DATE IMMEDIATELY PRIOR TO THE DISCHARGES, HER HUSBAND CALLED AT HER HOME TO PICK UP THEIR CHILDREN FOR HIS WEEKLY VISIT. WHILE HE WAS THERE MR. JACOBSON INFORMED HIS WIFE THAT THREE EMPLOYEES WERE GOING TO BE FIRED THE FOLLOWING DAY TO PUT A SCARE INTO THE MEN IN ORDER TO STOP THE UNION ACTIVITY AND "ROMEO WAS ONE OF THEM". MRS. JACOBSON STATED THAT SHE WAS ACQUAINTED WITH ROMEO (IDENTIFIED AS ROMEO ROUSSEAU) ALTHOUGH SHE DID NOT KNOW HIS SURNAME AND THAT RAYMOND LOYER AND JOHN VILLENEUVE WERE STRANGERS TO HER. MRS. JACOBSON FURTHER TESTIFIED THAT HER HUSBAND ALSO INQUIRED AFTER HER BROTHER-IN-LAW JOHN DESROCHES WHO WAS ALSO EMPLOYED BY THE RESPONDENT. DURING CROSS-EXAMINATION, WHEN ASKED HOW THE UNION BECAME AWARE OF HER CONVERSATION WITH HER HUSBAND, MRS. JACOBSON TESTIFIED THAT SHE DID NOT KNOW BUT THAT SHE ASSUMED THAT MR. DESROCHES HAD INFORMED THE UNION BECAUSE SHE HAD MENTIONED HER HUSBAND'S REMARKS TO MR. DESROCHES. WHILE COUNSEL FOR THE RESPONDENT SUBJECTED MRS. JACOBSON TO VIGOROUS CROSS-EXAMINATION HER TESTIMONY WAS IN NO WAY DISCREDITED.

5. TOM JACOBSON WAS CALLED AS A WITNESS BY THE RESPONDENT AND WHEN QUESTIONED CONCERNING THE TESTIMONY OF HIS WIFE MR. JACOBSON STATED THAT HE HAD PICKED UP HIS CHILDREN AT HIS WIFE'S PREMISES ON SUNDAY, JUNE 26TH BUT DID NOT "RECALL THE CONVERSATION" WITH HIS WIFE ABOUT THE DISMISSAL OF THE THREE PERSONS THE FOLLOWING DAY. MR. JACOBSON TESTIFIED THAT HE DID NOT RECALL ANYTHING ABOUT THE CONVERSATION AND WAS NOT AWARE THAT ANY OF THE THREE PERSONS WERE MEMBERS OF THE UNION.

6. IT WOULD APPEAR FROM ALL THE EVIDENCE THAT APART FROM CERTAIN INQUIRIES MADE BY OFFICIALS OF THE RESPONDENT CONCERNING MEMBERSHIP IN THE UNION, THE TESTIMONY OF MRS. JACOBSON IS THE KEY EVIDENCE IN THIS MATTER. WHILE COUNSEL FOR THE RESPONDENT VEHEMENTLY ARGUED THAT THE BOARD SHOULD NOT ACCEPT THE TESTIMONY OF MRS. JACOBSON THE BOARD FINDS THAT THERE IS NOTHING IN HER TESTIMONY OR THE MANNER IN WHICH SHE GAVE HER EVIDENCE WHICH WOULD CAUSE THE BOARD TO DOUBT THE VERACITY OF HER STATEMENTS. WHEN MRS. JACOBSON'S TESTIMONY IS CONTRASTED WITH THE EQUIVOCAL DENIAL OF HER HUSBAND THE BOARD FINDS THAT HER TESTIMONY IS TO BE PREFERRED. IF MR. JACOBSON HAD NOT INFORMED HIS WIFE OF THE IMPENDING DISCHARGES AND HAD NOT THE DISCHARGES BEEN FOR UNION ACTIVITY, IT IS REASONABLE TO ASSUME THAT MR. JACOBSON WOULD NOT ONLY HAVE BEEN SURPRISED BY SUCH STATEMENTS BUT WOULD LIKELY HAVE BEEN AGITATED BY SUCH A FALSEHOOD. NOT ONLY WAS THERE NO SUGGESTION OF SURPRISE OR AGITATION OVER THE STATEMENTS ALLEGED TO HAVE BEEN MADE BY HIM TO HIS WIFE BUT HE DID NOT EVEN DENY THAT THEY WERE MADE BY HIM. MR. JACOBSON SIMPLY STATED THAT HE "DID NOT RECALL" MAKING THESE STATEMENTS. WE ARE OF OPINION THAT THIS REPLY IS NOT ONE THAT A REASONABLE PERSON WOULD MAKE IN SUCH CIRCUMSTANCES. FOR THESE REASONS THE BOARD ACCEPTS THE TESTIMONY OF MRS. JACOBSON.

7. HAVING REGARD TO ALL THE EVIDENCE AND ESPECIALLY THE EVIDENCE OF MRS. JACOBSON THE BOARD IS SATISFIED THAT JOHN VILLENEUVE WAS DISCHARGED BY THE RESPONDENT ON JUNE 27TH, 1966 CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT.

8. THE COMPLAINANT OFFERED NO EVIDENCE CONCERNING LOSS OF EARNINGS SUSTAINED BY HIM AS A RESULT OF THE DISCHARGE AND THE BOARD MAKES NO FINDING WITH RESPECT TO SUCH LOSS BETWEEN THE DATE OF HIS DISCHARGE AND AUGUST 12TH, 1966 THE DATE OF THE HEARING IN THIS MATTER.

9. THE BOARD THEREFORE DETERMINES THAT:

- (A) JOHN VILLENEUVE SHALL BE REINSTATED FORTHWITH IN THE POSITION HE HELD AT THE TIME OF HIS DISCHARGE;
- (B) THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF THE LOSS OF EARNINGS THAT JOHN VILLENEUVE SUSTAINED BY REASON OF HIS HAVING BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN AUGUST 12TH, 1966 AND THE DATE OF HIS REINSTATEMENT; AND
- (C) IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO IN PARAGRAPH (B) HEREOF WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE AMOUNT TO BE PAID TO JOHN VILLENEUVE FOR LOSS OF EARNINGS SUSTAINED BY REASON OF HIS HAVING BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN AUGUST 12TH, 1966 AND THE DATE OF HIS REINSTATEMENT.

12005-66-U: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (COMPLAINANT) v. CAMPBELL MOTORS (OTTAWA) LTD. (RESPONDENT).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: P. T. CALLIGAN AND M. K. CARSON FOR THE
COMPLAINANT, K. A. MURCHISON, Q.C., FOR THE RESPONDENT.

DECISION OF THE BOARD: (AUGUST 23, 1966)

1. THIS IS A COMPLAINT FOR RELIEF PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT COMPLAINS THAT ON OR ABOUT JUNE 23RD, 1966, THE AGGRIEVED PERSON RONALD DUFOUR WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 IN THAT THE RESPONDENT REFUSED TO CONTINUE TO EMPLOY HIM BECAUSE HE WAS A MEMBER OF THE COMPLAINANT TRADE UNION.

2. IT MAY BE THAT THE RESPONDENT HAD JUSTIFICATION FOR DISCHARGING DUFOUR WHEN IT DISCOVERED THAT HE HAD USED THE FACILITIES OF THE PAINT SHOP OF THE

RESPONDENT, WHERE HE WAS EMPLOYED, FOR HIS OWN PRIVATE GAIN, CONTRARY TO THE INSTRUCTIONS OF THE RESPONDENT. THE RESPONDENT HOWEVER, TOOK NO DISCIPLINARY ACTION AGAINST DUFOUR AT THAT TIME AND ONLY MADE THE DECISION TO DISCHARGE HIM AFTER HE APPEARED AT THE BOARD HEARING ON THE CERTIFICATION APPLICATION OF THE COMPLAINANT AND GAVE TESTIMONY WHICH IMPLICATED THE RESPONDENT IN THE PREPARATION OF A STATEMENT OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION. WE DO NOT ACCEPT THE EXPLANATION OF JOHN HARVEY, THE GENERAL MANAGER OF THE RESPONDENT, AS TO THE REASON FOR THE DELAY IN DISCHARGING DUFOUR. FURTHER, THE EVIDENCE RELATING TO EARLIER MISDEMEANOURS OF DUFOUR ARE SO DISTANT IN TIME FROM THE DATE OF HIS DISCHARGE THAT WE CANNOT ACCEPT THESE EARLIER INCIDENTS AS BEING CONTRIBUTORY CAUSES IN THE RESPONDENT'S DECISION TO DISCHARGE DUFOUR.

3. ON ALL THE EVIDENCE, THE BOARD IS SATISFIED THAT THE RESPONDENT DISCHARGED DUFOUR ON JUNE 23RD, 1966, BECAUSE OF HIS ACTIVITIES ON BEHALF OF THE COMPLAINANT UNION, OF WHICH HE WAS A MEMBER, CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE ACT.

4. OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:-

- (1) THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY RONALD DUFOUR TO THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS HE HAD, AND RECEIVED, PRIOR TO AND UP TO THE TIME OF HIS DISCHARGE ON JUNE 23RD, 1966.
- (2) AS COMPENSATION FOR HIS LOSS OF WAGES AND EMPLOYMENT BENEFITS FROM JUNE 23RD, 1966 TO AND INCLUDING AUGUST 19TH, 1966, THE RESPONDENT SHALL FORTHWITH PAY RONALD DUFOUR THE SUM OF \$350.00.
- (3) THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW SUSTAINED OR WHICH MAY HEREAFTER BE SUSTAINED BY RONALD DUFOUR BETWEEN THE DATE OF THE HEARING ON AUGUST 19TH, 1966, AND THE DATE OF HIS ACTUAL RE-EMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF ANY SUCH FURTHER COMPENSATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.

INDEXED ENDORSEMENT - SECTION 47A

11891-66-M: LOCAL 440, RETAIL, WHOLESALE DAIRY WORKERS' UNION, OF THE RETAIL WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) v. ALLIANCE DAIRY LIMITED; DOMINION DAIRIES LIMITED (TORONTO DIVISION); AND MILK AND BREAD DRIVER AND DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENTS).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: H. BUCHANAN AND G. REEKIE FOR THE APPLICANT,
C. A. MORLEY AND M. H. STEWART FOR DOMINION DAIRIES LIMITED (TORONTO DIVISION),
AND T. E. ARMSTRONG, J. J. THOMSON AND S. MILLAR FOR MILK AND BREAD DRIVERS
AND DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF
AMERICA.

DECISION OF THE BOARD: (August 11, 1966)

1. THIS IS AN APPLICATION FOR RELIEF PURSUANT TO SECTION 47A OF THE LABOUR
RELATIONS ACT. THE APPLICANT, LOCAL 440, RETAIL, WHOLESALE DAIRY WORKERS' UNION,
OF THE RETAIL WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC, REFERRED HERE-
AFTER AS RETAIL WHOLESALE, WAS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE
RESPONDENT ALLIANCE DAIRY LIMITED. ON OR ABOUT MAY 15TH, 1966, THE RESPONDENT
ALLIANCE DAIRY LIMITED ENTERED INTO CERTAIN TRANSACTIONS WITH THE RESPONDENT
DOMINION DAIRIES LIMITED. HAVING REGARD TO THE STATEMENTS OF COUNSEL, IT IS
SUFFICIENT TO STATE HERE THAT THESE TRANSACTIONS CONSTITUTED THE SALE OF A
BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT. COUNSEL
FOR THE RESPONDENT DOMINION DAIRIES LIMITED AND FOR THE RESPONDENT MILK BREAD
DRIVERS AND DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF
AMERICA (REFERRED TO HEREFTER AS TEAMSTERS), CONCEDED THAT THIS WAS THE CASE.

2. AT THE TIME OF THE TRANSACTIONS IN QUESTION, THE RESPONDENT TEAMSTERS
WAS BARGAINING AGENT FOR EMPLOYEES OF DOMINION DAIRIES LIMITED, IN A BARGAIN-
ING UNIT LIKE THAT FOR WHICH RETAIL WHOLESALE HAD BEEN BARGAINING AGENT WITH
RESPECT TO EMPLOYEES OF ALLIANCE DAIRY LIMITED. HAVING REGARD TO ALL OF THE
EVIDENCE, THE BOARD FINDS THAT EMPLOYEES OF THE TWO BUSINESSES HAVE BEEN INTER-
MINGLED WITHIN THE MEANING OF SECTION 47A (5) OF THE LABOUR RELATIONS ACT.
IN THESE CIRCUMSTANCES SECTION 47A (5) PROVIDES THAT THE BOARD MAY

- (A) DETERMINE WHETHER THE EMPLOYEES CONCERNED
CONSTITUTE ONE OR MORE APPROPRIATE
BARGAINING UNITS;
- (B) DECLARE WHICH TRADE UNION OR TRADE UNIONS,
IF ANY, SHALL BE THE BARGAINING AGENT OR
AGENTS FOR THE EMPLOYEES IN SUCH UNIT OR
UNITS; AND
- (C) AMEND, TO SUCH EXTENT AS THE BOARD DEEMS
NECESSARY, ANY CERTIFICATE ISSUED TO ANY TRADE
UNION OR ANY BARGAINING UNIT DEFINED IN ANY
COLLECTIVE AGREEMENT.

HAVING REGARD TO THE FOREGOING FINDINGS AND TO THE CIRCUMSTANCES OF THE INSTANT
CASE, IT IS OUR DETERMINATION THAT THE EMPLOYEES CONCERNED CONSTITUTE ONE UNIT
APPROPRIATE FOR COLLECTIVE BARGAINING. THERE ARE NO DIFFERENCES OF SUBSTANCE
IN THE DESCRIPTION OF THE BARGAINING UNITS WHICH HAVE BEEN REPRESENTED BY THE
TWO TRADE UNIONS.

3. UNDER SECTION 47A (7), BEFORE DISPOSING OF ANY APPLICATION UNDER SECTION 47A, THE BOARD MAY INTER ALIA HOLD SUCH REPRESENTATION VOTES AS IT DEEMS APPROPRIATE. IT WAS THE CONTENTION OF THE APPLICANT RETAIL WHOLESALE THAT, IN THE EVENT THE BOARD FOUND THAT THERE WAS A SALE OF A BUSINESS AND THAT THERE HAD BEEN AN INTERMINGLING OF EMPLOYEES AS BETWEEN THE TWO BUSINESSES, A REPRESENTATION VOTE SHOULD BE CONDUCTED IN ORDER TO DETERMINE WHICH TRADE UNION SHOULD BE BARGAINING AGENT FOR THE EMPLOYEES OF DOMINION DAIRIES LIMITED. COUNSEL FOR THE RESPONDENT DOMINION DAIRIES LIMITED AND FOR THE RESPONDENT TEAMSTERS WERE OPPOSED TO THE HOLDING OF A REPRESENTATION VOTE IN THE INSTANT CASE. THE EVIDENCE ESTABLISHES THAT, AT THE TIME OF THE SALE, 69 EMPLOYEES OF ALLIANCE DAIRY LIMITED WERE HIRED BY DOMINION DAIRIES LIMITED. AT THAT TIME THERE WERE 430 PERSONS IN THE BARGAINING UNIT IN THE EMPLOY OF DOMINION DAIRIES LIMITED SO THAT, IMMEDIATELY FOLLOWING THE SALE, THERE WERE SOME 499 PERSONS IN THE BARGAINING UNIT. THAT IS APPROXIMATELY 14 PER CENT OF THE EMPLOYEES OF DOMINION DAIRIES LIMITED IN THE BARGAINING UNIT WERE FORMERLY REPRESENTED BY THE APPLICANT RETAIL WHOLESALE.

4. IN THE MAJORITY OF CASES WHICH HAVE COME BEFORE THE BOARD PURSUANT TO SECTION 47A, IT HAS NOT BEEN NECESSARY, NOR HAS IT BEEN REQUESTED THAT A REPRESENTATION VOTE BE CONDUCTED. IN VIRTUALLY ALL OF THOSE CASES IN WHICH A VOTE HAS BEEN CONDUCTED, THERE WAS AGREEMENT BETWEEN THE PARTIES THAT A REPRESENTATION VOTE WAS PROPER. IN PARTICULAR, REFERENCE MAY BE MADE TO THE BELTON-QUINN LUMBER LIMITED CASE, O.L.R.B. MONTHLY REPORTS, AUGUST 1965, P. 373, AND THE ROMAN CATHOLIC SEPARATE SCHOOL BOARD FOR THE CITY OF WINDSOR CASE, BOARD FILE NO. 11385-65-M. IN EACH OF THOSE CASES ROUGHLY ONE THIRD OF THE EMPLOYEES IN THE NEW BARGAINING UNIT HAD FORMERLY BEEN REPRESENTED BY THE APPLICANT TRADE UNION. IT WAS NOT NECESSARY FOR THE BOARD TO SET OUT CRITERIA AS TO THE PROPRIETY OF A REPRESENTATION VOTE IN VIEW OF ITS RELIANCE ON THE AGREEMENT OF THE PARTIES IN THOSE CASES.

5. THE PURPOSE OF SECTION 47A IS, SUBJECT TO THE PROVISIONS SET OUT IN THE SECTION, TO CONTINUE THE BARGAINING RIGHTS OF A TRADE UNION WHICH HAD REPRESENTED EMPLOYEES IN A BARGAINING UNIT WHERE THE EMPLOYER HAS SOLD HIS BUSINESS. BARGAINING RIGHTS THUS ARE PROTECTED IN THE INTEREST OF STABILITY IN COLLECTIVE BARGAINING RELATIONSHIPS. WHERE TWO OR MORE BARGAINING UNITS ARE, AS THE RESULT OF A SALE AND THE INTERMINGLING OF EMPLOYEES, MERGED INTO ONE, AS IN THE INSTANT CASE, BOTH THE NEED FOR STABILITY IN COLLECTIVE BARGAINING RELATIONSHIPS AND PLAIN COMMON SENSE WOULD REQUIRE THAT, WHERE THERE IS A LARGE DISPARITY IN THE SIZE OF THE TWO GROUPS OF EMPLOYEES, THERE WOULD BE NO REPRESENTATION VOTE, WITH ITS NECESSARY EXPENSE, PROPAGANDA AND DISRUPTION, BUT RATHER A DECLARATION SHOULD BE MADE THAT THE TRADE UNION REPRESENTING THE GREAT MAJORITY OF THE EMPLOYEES IS TO BE BARGAINING AGENT FOR THE NEW BARGAINING UNIT. ALL THE PARTIES WERE AGREED THAT NO CRITERIA EXISTED BY WHICH A "LARGE DISPARITY" OR "GREAT MAJORITY" MIGHT BE PRECISELY DEFINED; IT WAS, HOWEVER, COMMON GROUND, THAT THERE MIGHT WELL BE CASES IN WHICH SUCH A DISPARITY EXISTED THAT IT WOULD NOT BE APPROPRIATE TO HOLD A REPRESENTATION VOTE. IN OUR VIEW, IT WOULD BE UNNECESSARY AND PREMATURE FOR THE BOARD TO ATTEMPT, IN THIS CASE, TO DEFINE FOR THE FUTURE WHAT THE MINIMUM PROPORTION OF EMPLOYEES WOULD BE WHICH A TRADE UNION MUST REPRESENT IN ORDER TO BE ENTITLED TO APPEAR ON THE BALLOT IN A REPRESENTATION VOTE IN CASES OF THIS NATURE. IT IS SUFFICIENT FOR THE BOARD, IN THE CIRCUMSTANCES OF THE INSTANT CASE, TO SAY SIMPLY THAT IT DOES NOT DEEM A REPRESENTATION VOTE TO BE APPROPRIATE. IT MAY BE NOTED THAT, ALTHOUGH NOTICE OF THIS APPLICATION WAS

POSTED AT THE PREMISES OF THE RESPONDENT DOMINION DAIRIES LIMITED, NONE OF THE EMPLOYEES HAS APPEARED OR SOUGHT TO MAKE REPRESENTATIONS IN THESE PROCEEDINGS.

6. HAVING REGARD TO ALL OF THE CIRCUMSTANCES, THE BOARD DECLARES THAT THE RESPONDENT MILK AND BREAD DRIVERS AND DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA IS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT DOMINION DAIRIES LIMITED IN THE BARGAINING UNIT DESCRIBED IN THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THEM.

7. THE BOARD REFRAINS FROM SETTING OUT ANY OPINION WITH RESPECT TO THE EFFECT OF THE DECLARATION MADE IN THE PRECEDING PARAGRAPH. ALTHOUGH COUNSEL FOR THE RESPONDENT TEAMSTERS REQUESTED THE BOARD TO GIVE SUCH AN OPINION, AND ALTHOUGH ARGUMENT WAS HEARD WITH RESPECT THERETO, NO NOTICE OF SUCH REQUEST HAD BEEN GIVEN AND, IN OUR VIEW, IT IS TO BE PREFERRED THAT SUCH QUESTIONS BE ARGUED AFTER FULL OPPORTUNITY FOR PREPARATION. FURTHER, IT IS NOT THE BOARD'S PRACTICE TO ISSUE ADVISORY OPINIONS, AND, IN OUR VIEW, WE OUGHT NOT TO DEPART FROM THIS PRACTICE IN THE INSTANT CASE.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION

11951-66-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) v. CHARLES DUNCAN, AND TORONTO AND DISTRICT COUNCIL OF CARPENTERS AND MILLMEN, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENTS).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (August 15, 1966)

1. THE RESPONDENT IS APPLYING TO THE BOARD PURSUANT TO SECTION 79(1) OF THE LABOUR RELATIONS ACT FOR RECONSIDERATION AND REVERSAL OF ITS DECISION OF JULY 8TH, 1966 DECLARING THAT THE RESPONDENT TORONTO AND DISTRICT COUNCIL OF CARPENTERS AND MILLMEN, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA DID ON AND AFTER JUNE 27TH, 1966 CALL OR AUTHORIZE AN UNLAWFUL STRIKE ENGAGED IN BY EMPLOYEES OF THE APPLICANT AT ITS CONSTRUCTION PROJECT AT THE PROVINCE OF ONTARIO SCIENCE AND TECHNOLOGY CENTRE IN THE CITY OF TORONTO, CONTRARY TO THE PROVISIONS OF SECTION 55 OF THE ACT.

2. THE BOARD HAS CAREFULLY CONSIDERED THE SUBMISSIONS OF COUNSEL FOR THE RESPONDENT AND THE REPLY MADE BY COUNSEL FOR THE APPLICANT. WHILE THE BOARD DOES NOT FEEL CALLED UPON TO DEAL WITH EACH AND EVERY ARGUMENT PUT FORWARD BY COUNSEL FOR THE RESPONDENT IN SUPPORT OF ITS REQUEST FOR RECONSIDERATION, THE BOARD DOES WISH TO COMMENT ON A NUMBER OF THE MATTERS RAISED BY HIM WHICH IN OUR VIEW ARE RELEVANT TO THE BOARD'S DECISION TO GRANT THE DECLARATION SOUGHT BY THE APPLICANT.

3. COUNSEL FOR THE RESPONDENT SUBMITS THAT THE APPLICANT FAILED TO PROVE ALL THE ESSENTIAL INGREDIENTS NECESSARY TO ESTABLISH THAT THE RESPONDENT CALLED OR AUTHORIZED AN UNLAWFUL STRIKE CONTRARY TO THE PROVISIONS OF SECTION 54(2).

IN LIGHT OF THE ABOVE SUBMISSION THE BOARD HAS REVIEWED ITS EVIDENCE IN THIS MATTER.

4.

IT WAS ESTABLISHED THAT THE APPLICANT CEASED TO BE A MEMBER OF THE TORONTO CONSTRUCTION ASSOCIATION IN JANUARY, 1964. BY VIRTUE OF SECTION 38 (1) OF THE ACT FROM THAT TIME UNTIL THE EXPIRY OF THE ASSOCIATION AGREEMENT ON APRIL 30TH, 1965 THE APPLICANT AND THE RESPONDENT WERE BOUND BY A "LIKE AGREEMENT". THE LETTER OF INTENT DATED JULY 27TH, 1965 WHICH WAS EXECUTED BY DONALD STEVENS, DIRECTOR OF INDUSTRIAL RELATIONS FOR THE APPLICANT, CONTAINS A RECITAL THAT THE APPLICANT AND THE RESPONDENT DESIRE TO NEGOTIATE A COLLECTIVE AGREEMENT AS PROMPTLY AS POSSIBLE. IN ADDITION, STEVENS IN HIS VIVA VOCE EVIDENCE TESTIFIED THAT THE APPLICANT ADHERED TO THE PROVINCIAL COUNCIL AGREEMENT UNTIL THE BOARD ISSUED ITS DECISION ON JULY 14TH, 1965, IN THE PIGOTT CONSTRUCTION COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, JULY 1965, P. 294. THE BOARD IS SATISFIED THAT THIS EVIDENCE SUPPORTS THE CONCLUSION THAT THE APPLICANT AND THE RESPONDENT HAD NOT EXHAUSTED THE REQUIREMENT OF SECTION 54(2) BY JULY 27TH, 1965, THE DATE OF THE EXECUTION OF THE LETTER OF INTENT. BOTH THE APPLICANT AND THE RESPONDENT AGREED AT THE BOARD HEARING IN THE INSTANT APPLICATION THAT THERE HAS NOT BEEN ANY CHANGE IN THEIR POSITION IN THE INTERVENING PERIOD UP TO AND INCLUDING THE DATE OF THE COMMENCEMENT OF THE STRIKE ON JUNE 27TH OF THIS YEAR. THE BOARD ACCORDINGLY FINDS THAT THE APPLICANT DISCHARGED ANY ONUS OF PROOF UPON IT AS IT RELATES TO EVIDENCE OF A VIOLATION OF SECTION 54(2) OF THE ACT.

5.

WITH RESPECT TO THE VIVA VOCE EVIDENCE, OF STEVENS REFERRED TO IN THE ABOVE PARAGRAPH, WE DO NOT CONSIDER IT TO BE INADMISSIBLE "OPINION" EVIDENCE, IF THAT IS WHAT COUNSEL FOR THE RESPONDENT IS ALLEGING IN HIS SUBMISSIONS. RATHER THIS EVIDENCE IS ADMISSIBLE TOWARDS PROVING THAT THE APPLICANT AND THE RESPONDENT DID NOT COMPLY WITH THE PROVISIONS OF SECTION 54(2) PRIOR TO THE COMMENCEMENT OF THE STRIKE WHICH OCCURRED IN THE SUMMER OF 1965 AND WHICH ACCORDING TO THE LETTER OF INTENT WAS IN PROGRESS ON JULY 27TH, 1965, THE DATE OF ITS EXECUTION BY STEVENS. WE WOULD ALSO ADD THAT WHILE THE BOARD IN PARAGRAPH 13 OF ITS DECISION OF JULY 8TH, 1966 STATED THAT THE LETTER OF INTENT MIGHT BE INTERPRETED AS AN ADMISSION BY THE APPLICANT THAT THE RESPONDENTS' STRIKE ACTION AGAINST IT AT THAT TIME WAS LAWFUL, THE MORE REASONABLE AND LOGICAL INTERPRETATION OF THE WORDING OF THE LETTER OF INTENT IS THAT THE APPLICANT WAS ADMITTING ONLY THAT THE STRIKE ACTION BY THE RESPONDENT AGAINST THE TORONTO CONSTRUCTION ASSOCIATION WAS LAWFUL.

6.

COUNSEL FOR THE RESPONDENT ALSO SUBMITS THAT WHETHER THE APPLICANT OR THE ASSOCIATION GAVE NOTICE THAT THE APPLICANT WAS NOT A MEMBER OF THE ASSOCIATION IS A RELEVANT CONSIDERATION. THE BOARD, HOWEVER, SEES NO REASON TO ALTER ITS POSITION AS STATED IN PARAGRAPH 12 OF ITS DECISION OF JULY 8TH, 1966, THAT THE QUESTION OF NOTICE IS NOT MATERIAL. FOR IF WE ASSUME FOR PURPOSES OF ARGUMENT THAT NOTICE WAS GIVEN TO THE RESPONDENT THAT THE APPLICANT HAD CEASED TO BE A MEMBER OF THE ASSOCIATION PRIOR TO THE COMMENCEMENT OF NEGOTIATIONS FOR THE RENEWAL OF THE ASSOCIATION AGREEMENT WHICH EXPIRED ON APRIL 30TH, 1965, THE APPLICANT WOULD NOT BE A PARTY TO THE BARGAINING THAT TOOK PLACE BETWEEN THE ASSOCIATION AND THE RESPONDENT FOR THE RENEWAL OF THEIR AGREEMENT. IN THAT SITUATION THE APPLICANT AND THE RESPONDENT WOULD BE REQUIRED TO FULFIL THE CONDITIONS OF SECTION 54(2) WHICH THE BOARD HAS FOUND THEY FAILED TO DO.

7.

ON THE OTHER HAND, LET US ASSUME FOR PURPOSES OF ARGUMENT THAT NO NOTICE WAS GIVEN TO THE RESPONDENT THAT THE APPLICANT HAS CEASED TO BE A MEMBER OF THE ASSOCIATION. FURTHER, WHILE THE ASSOCIATION IS DEEMED ONLY TO BARGAIN FOR ITS MEMBERS, LET US ASSUME ALSO FOR PURPOSES OF ARGUMENT THAT THE ASSOCIATION DID BARGAIN ON BEHALF OF THE APPLICANT FOR THE RENEWAL OF THE COLLECTIVE AGREEMENT

WHICH EXPIRED ON APRIL 30TH, 1965. IT FOLLOWS THAT THE APPLICANT NECESSARILY BECAME A PARTY TO AND IS BOUND BY THE COLLECTIVE AGREEMENT SUBSEQUENTLY ENTERED INTO BY THE RESPONDENT AND THE ASSOCIATION. COUNSEL FOR THE RESPONDENT APPEARS TO SUGGEST THAT EVEN IF THE ASSOCIATION BARGAINED ON BEHALF OF THE APPLICANT AND HAS THEREFORE COMPLIED WITH SECTION 54(2) OF THE ACT, THE APPLICANT NEVERTHELESS DID NOT BECOME A PARTY TO THE COLLECTIVE AGREEMENT SUBSEQUENTLY ENTERED INTO BY THE RESPONDENT AND THE ASSOCIATION. IF THIS, IN FACT, IS THE POSITION TAKEN BY THE RESPONDENT IT MUST BE REJECTED AS BEING WHOLLY UNTENABLE. FINALLY, IF WE ASSUME FOR PURPOSES OF ARGUMENT THAT THE "LIKE AGREEMENT" HAS RENEWED ITSELF FROM YEAR TO YEAR THAT AGREEMENT CONTINUES TO BE INEFFECT TO THE PRESENT TIME. THE IMPORTANT POINT IS THAT IN ALL OF THE ABOVE CIRCUMSTANCES THE STRIKE WHICH COMMENCED ON JUNE 27TH, 1966 IS UNLAWFUL.

8. THE RESPONDENT ALSO SUBMITS THAT THE BOARD IN FACT MADE A FINDING IN THE PIGOTT CONSTRUCTION LIMITED CASE (SUPRA) THAT THE PROVINCIAL COUNCIL AGREEMENT WAS NOT A VALID COLLECTIVE AGREEMENT. AS WAS SET OUT IN PARAGRAPH 15 OF THE BOARD'S DECISION OF JULY 8TH, 1966, WHETHER OR NOT THE AGREEMENT IS VALID, THE RESULT IS THE SAME, NAMELY, THE STRIKE COMMENCING ON JUNE 27TH, 1966 IS UNLAWFUL. ACCORDINGLY, IT IS NOT NECESSARY FOR THE BOARD TO MAKE ANY FINDING WITH RESPECT TO THE VALIDITY OF THE AGREEMENT.

9. HAVING REGARD TO ALL OF THE FOREGOING, THE BOARD DENIES THE REQUEST OF THE RESPONDENT TO REVERSE ITS DECISION OF JULY 8TH, 1966 AND RESCIND ITS DECLARATION THAT THE RESPONDENT CALLED OR AUTHORIZED AN UNLAWFUL STRIKE OF EMPLOYEES OF THE RESPONDENT COMMENCING ON JUNE 27TH, 1966.

12008-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. THE WANDER COMPANY OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE. (AUGUST 19, 1966)

1. THE RESPONDENT BY LETTER DATED AUGUST 10TH, 1966 REQUESTED THE BOARD TO REVISE ITS DECISION DATED AUGUST 8TH, 1966 IN THIS MATTER BY EXCLUDING FROM THE BARGAINING UNIT DETERMINED BY THE BOARD TO BE APPROPRIATE ALL STUDENTS EMPLOYED BY THE RESPONDENT. THE APPLICANT OPPOSED THE RESPONDENT'S REQUEST.

2. THE BOARD IN ITS DECISION DATED AUGUST 8TH, 1966 EXCLUDED FROM THE BARGAINING UNIT, INTER ALIA, "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD" WHICH EXCLUSIONS ARE IN ACCORDANCE WITH THE TERMINOLOGY USUALLY USED BY THE BOARD WHEN DEALING WITH THESE CLASSIFICATIONS.

3. THE RESPONDENT IN ITS LETTER OF AUGUST 10TH, 1966 STATED THAT IN ADDITION TO STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, THE RESPONDENT EMPLOYS STUDENTS AT OTHER TIMES OF THE YEAR AND "ON OCCASION SOME OF THESE STUDENTS MAY WORK MORE THAN 24 HOURS A WEEK".

4. IT IS TO BE NOTED THAT THE BOARD'S DECISION OF AUGUST 8TH, 1966 EXCLUDES "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK". IT WOULD LOGICALLY

FOLLOW THAT IF SUCH AN EXCLUDED PERSON, WHETHER A STUDENT EMPLOYEE OR ANY OTHER PART-TIME EMPLOYEE, OCCASIONALLY WORK MORE THAN 24 HOURS PER WEEK, SUCH OCCASIONAL OCCURRENCE WOULD NOT PLACE THE PERSON OUTSIDE THE CATEGORY OF A PERSON REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK.

5. HAVING REGARD TO THE FACT THAT THE BOARD'S DESCRIPTION OF THE BARGAINING UNIT IS IN THE TERMS USUALLY USED BY THE BOARD AND THE FACT THAT THE RESPONDENT HAD THE OPPORTUNITY AT THE HEARING IN THIS MATTER TO RAISE THE ISSUE IT RAISED FOR THE FIRST TIME IN ITS LETTER OF AUGUST 10TH, 1966 AND THE FACT THAT IT IS NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE WHICH WAS NOT AVAILABLE AT THE HEARING IN THIS MATTER, THE BOARD IS OF OPINION THAT IT SHOULD NOT RECONSIDER, VARY OR REVOKE ITS DECISION OF AUGUST 8TH, 1966. THE RESPONDENT'S REQUEST IS THEREFORE DENIED.

STATISTICAL TABLES FOR AUGUST 1966

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	AUGUST 1966	1ST 5 MONTHS OF FISCAL YEAR 1966-67	FISCAL YEAR 1965-66
I. CERTIFICATION	99	442	431
II. DECLARATION TERMINATING BARGAINING RIGHTS	1	17	28
III. DECLARATION OF SUCCESSOR STATUS	2	4	5
IV. DECLARATION THAT STRIKE UNLAWFUL	-	9	28
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	-	-
VI. CONSENT TO PROSECUTE	3	44	30
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	10	53	57
VIII. MISCELLANEOUS	<u>4</u>	<u>25</u>	<u>26</u>
TOTAL	<u>119</u>	<u>594</u>	<u>605</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	AUGUST 1966	1ST 5 MONTHS OF FISCAL YEAR 1966-67	FISCAL YEAR 1965-66
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	77	358	556

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY MAJOR TYPES

		NUMBER DISPOSED OF		
		AUGUST 1ST 5 MONTHS OF FISCAL YR.		
		1966	1966-67	1965-66
I.	CERTIFICATION	88	415	438
II.	DECLARATION TERMINATING BARGAINING RIGHTS	1	19	25
III.	DECLARATION OF SUCCESSOR STATUS	-	2	9
IV.	DECLARATION THAT STRIKE UNLAWFUL	-	6	24
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	-	-
VI.	CONSENT TO PROSECUTE	4	34	23
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	19	57	56
VIII.	MISCELLANEOUS	<u>3</u>	<u>19</u>	<u>44</u>
TOTAL		<u>115</u>	<u>552</u>	<u>619</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>AUGUST 1ST 5 MTHS FISCAL YR.</u> <u>1966</u>	<u>1966-67</u>	<u>1965-66</u>	<u>AUGUST 1ST 5 MTHS FISCAL YR.</u> <u>1966</u>	<u>1966-67</u>	<u>1965-66</u>
<u>1. CERTIFICATION</u>						
GRANTED	66	296	318	1846	6987	9168
DISMISSED	14	70	82	3233	6755	3190
WITHDRAWN	<u>8</u>	<u>47</u>	<u>28</u>	<u>60</u>	<u>680</u>	<u>2608</u>
TOTAL	<u>88</u>	<u>413</u>	<u>438</u>	<u>5139</u>	<u>14422</u>	<u>14966</u>
<u>2. TERMINATION</u>						
<u>OF BARGAINING</u>						
<u>RIGHTS</u>						
GRANTED	1	12	10	67	460	1034
DISMISSED	-	7	13	-	187	302
WITHDRAWN	<u>-</u>	<u>-</u>	<u>2</u>	<u>-</u>	<u>-</u>	<u>73</u>
TOTAL	<u>1</u>	<u>19</u>	<u>25</u>	<u>67</u>	<u>647</u>	<u>1409</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>AUGUST 1ST 1966</u>	<u>5 MONTHS OF FISCAL YR. 1966-67</u>	<u>1965-66</u>
III.	<u>DECLARATION THAT STRIKE UNLAWFUL</u>			
	GRANTED	-	2	6
	DISMISSED	-	-	3
	WITHDRAWN	-	4	15
	TOTAL	-	6	24
IV.	<u>DECLARATION THAT LOCKOUT UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	-
	WITHDRAWN	-	-	-
	TOTAL	-	-	-
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	1	4	4
	DISMISSED	-	2	3
	WITHDRAWN	3	28	16
	TOTAL	4	34	23

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED
OF BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>AUGUST</u> <u>1966</u>	<u>1ST 5 MTHS</u> <u>1966-67</u>	<u>FISCAL YEAR</u> <u>1965-66</u>
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	-	8	9
POST-HEARING VOTE	4	16	14
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	1	3	3
POST-HEARING VOTE	6	26	15
BALLOTS NOT COUNTED	-	-	2
TOTAL	<u>11</u>	<u>53</u>	<u>43</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>AUGUST</u> <u>1966</u>	<u>1ST 5 MTHS</u> <u>1966-67</u>	<u>FISCAL YEAR</u> <u>1965-66</u>
*RESPONDENT UNION SUCCESSFUL	-	4	1
RESPONDENT UNION UNSUCCESSFUL	-	9	10
TOTAL	<u>-</u>	<u>13</u>	<u>11</u>

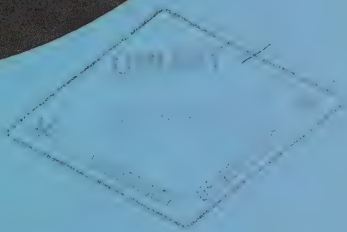
*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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ONTARIO

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ONTARIO LABOUR RELATIONS BOARD

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING SEPTEMBER 1966

BARGAINING AGENTS CERTIFIED DURING SEPTEMBER

No Vote Conducted

10775-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. FALCONBRIDGE NICKEL MINES LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF SUDBURY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENTS BINDING UPON THE RESPONDENT." (310 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 379).

11289-65-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 421 (APPLICANT) v. THE KVP COMPANY LIMITED (RESPONDENT) v. EMPLOYEE (OBJECTOR).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT ENGAGED IN OFFICE WORK WHILE EMPLOYED IN ITS OFFICES AT ESPANOLA AND IN ITS COMPANY WOODS CAMPS LOCATED ON THE COMPANY'S TIMBER LIMITS AND WORK SITES, INCLUDING EMPLOYEES EMPLOYED WITHIN THE FOLLOWING CLASSIFICATIONS: ASSISTANTS TO ENGINEER, FIREMEN, JANITORS, COST ACCOUNTANTS, SWITCHBOARD OPERATORS, DRAFTSMEN, PRODUCTION QUALITY CONTROLLERS, GARAGE UTILITY MAN, SCALERS AND CHECK SCALERS, WAREHOUSEMEN, SENIOR WOODS ACCOUNTING CLERKS, TIMEKEEPERS, FIRE PROTECTION SUPERVISOR (WOODS), TREE COUNTERS, APPRENTICES (DRAFTING), AND JANITRESS, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, PRIVATE SECRETARIES TO DEPARTMENT MANAGERS AND ABOVE, EMPLOYEES EMPLOYED IN THE PERSONNEL DEPARTMENT, EMPLOYEES COVERED BY SUBSISTING COLLECTIVE AGREEMENTS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND EMPLOYEES EMPLOYED WITHIN THE FOLLOWING CLASSIFICATIONS: SUPERVISOR WASTE CONTROL, WOODS BUYER, ASSISTANT PURCHASING AGENT, FIELD AUDITOR, CHIEF STORE KEEPER, ASSISTANT WOODS ACCOUNTANT, ASSISTANT CHIEF SCALER, ASSISTANT TRAFFIC MANAGER, RIGGING REPAIRMAN, SUPERVISOR CLERK, GATE TENDER AND SUPERVISOR PENSION ACCOUNTING." (110 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11694-66-R: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) v. DAILY JOURNAL-RECORD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE EMPLOYED IN ITS NEWSPAPER AND JOB PRINTING COMPOSING AND PRESS ROOMS, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 397).

11835-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. DECOR METAL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT MIDLAND, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OUTSIDE SALESMEN, CONFIDENTIAL SECRETARY TO THE PRESIDENT, CONFIDENTIAL SECRETARY TO THE VICE-PRESIDENT, EMPLOYEES IN THE PERSONNEL DEPARTMENT, PURCHASING AGENT, ASSISTANT MANAGER OF THE ENGINEERING DEPARTMENT, CHIEF INSPECTOR, PLANT LAY-OUT AND METHODS MEN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (36 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11883-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. HEATH & SHERWOOD UNDERGROUND DRILLING DIVISION OF GLENGARRY FOREST PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN DIAMOND DRILLING AT ITS TOTTEN JOB SITE IN THE TOWNSHIP OF DRURY, ITS MCLELLAN JOB SITE IN THE TOWNSHIP OF SKEAD AND ITS NORTH MINE JOB SITE IN THE TOWNSHIP OF SNIDER, ALL IN THE DISTRICT OF SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (33 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 401).

11885-66-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U. S. A. & CANADA, LOCAL 905 (APPLICANT) V. EARLE PULLAN COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE, SALES AND DESIGN STAFF." (45 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 403).

11993-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF COUNTY OF LINCOLN (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE ROADS DEPARTMENT OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN OR SUPERVISOR, THE ASSISTANT TO THE ROAD SUPERINTENDENT, A CONFIDENTIAL SECRETARY TO THE ROAD SUPERINTENDENT, TRAFFIC CONTROL OFFICERS OR POLICE OFFICERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (49 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12064-66-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 131
(APPLICANT) V. P. F. COLLIER & SON LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT OFFICE MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT OFFICE MANAGER, SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 408).

12070-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #249
(APPLICANT) V. LOOBY CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON AND FRONTENAC, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12081-66-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SENECA WIRE OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RICHMOND HILL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (23 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 412).

12094-66-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, B.S.E.I. U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. THE WOMEN'S CHRISTIAN ASSOCIATION OF LONDON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE McCORMICK HOME FOR THE AGED, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, HOUSEKEEPER, FOREMAN, PROFESSIONAL MEDICAL STAFF, GRADUATE AND UNDERGRADUATE NURSES, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (30 EMPLOYEES IN THE UNIT).

12096-66-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. PLASTICAST, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND SECURITY GUARDS." (57 EMPLOYEES IN THE UNIT).

12109-66-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880 (APPLICANT) V. HOFFMAN BROTHERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

12111-66-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, B.S. E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. THE NORFOLK HOSPITAL ASSOCIATION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SIMCOE, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (131 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY AND FOR THE PURPOSES OF THE INSTANT CASE, THE BOARD DECLARES THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOOT THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL, CARDIOLOGICAL TECHNICIANS AND STUDENTS TAKING FORMAL COURSES LEADING TO THEIR CERTIFICATION AS REGISTERED TECHNICIANS OR REGISTERED RADIOLOGICAL TECHNICIANS.

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT REGISTERED NURSING ASSISTANTS ARE INCLUDED IN THE BARGAINING UNIT. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT STUDENT REGISTERED NURSING ASSISTANTS ARE EXCLUDED FROM THE BARGAINING UNIT.

12112-66-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LARSEN & SHAW LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WALKERTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (58 EMPLOYEES IN THE UNIT).

12114-66-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GOODYEAR TIRE AND RUBBER COMPANY OF CANADA, LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OWEN SOUND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, QUALITY CONTROL INSPECTORS, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (113 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12115-66-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. PRECISION RUBBER PRODUCTS (CANADA) LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWNSHIP OF ORILLIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (83 EMPLOYEES IN THE UNIT).

12123-66-R: LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) (APPLICANT) V. SQUARE D COMPANY CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STRATFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE

SCHOOL VACATION PERIOD." (19 EMPLOYEES IN THE UNIT).

12124-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. COCHRANE TOOL & DESIGN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (43 EMPLOYEES IN THE UNIT).

12125-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. EMMONS TOOL & DIE COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (52 EMPLOYEES IN THE UNIT).

12126-66-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS BATHURST STREET PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

12131-66-R: LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) (APPLICANT) V. FERGUS CABLES LIMITED (RESPONDENT) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FERGUS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (22 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 417).

12132-66-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC (APPLICANT) V. ACME DIVISION POLYGON SERVICES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT GUARDS, WATCHMEN, OFFICE, TECHNICAL AND SALES STAFF, CLERICAL WORKERS, SUB-FOREMAN, FOREMAN AND PERSONS ABOVE THE RANK OF FOREMAN, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (14 EMPLOYEES IN THE UNIT).

12133-66-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORE IN K-MART PLAZA IN WATERLOO TOWNSHIP REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGER, OFFICE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (27 EMPLOYEES IN THE UNIT).

12137-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. JET METAL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (37 EMPLOYEES IN THE UNIT).

12138-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. JETCO MANUFACTURING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (46 EMPLOYEES IN THE UNIT).

12140-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. FURLONG PLASTICS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (49 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

12148-66-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. THE HESPELER FURNITURE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HESPELER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (97 EMPLOYEES IN THE UNIT).

12151-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION #2307 (APPLICANT) V. DODGE CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

12154-66-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CANADIAN GENERAL ELECTRIC COMPANY LIMITED ELECTRONIC AND DEFENCE PRODUCTS DEPARTMENT 70 WINGOLD AVENUE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS 70 WINGOLD AVENUE PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (15 EMPLOYEES IN THE UNIT).

12157-66-R: RETAIL STORE EMPLOYEES UNION, LOCAL NO. 832 (APPLICANT) V. STYLERITE DEPARTMENT STORES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DRYDEN, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

12159-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE BELLEVILLE PUBLIC SCHOOL BOARD (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT, R.S.O. 1960, c. 202." (18 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 418).

12160-66-R: SUDBURY TYPOGRAPHICAL UNION LOCAL 846, SUBORDINATE UNION OF, THE INTERNATIONAL TYPOGRAPHICAL UNION (APPLICANT) v. ACME PRINTERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY ENGAGED IN COMPOSING ROOM, PRESS-ROOM, BINDERY AND LITHOGRAPHIC PROCESS WORK, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12162-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) v. N. SANI Co. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

12169-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. THE EDWARD MILNER COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (52 EMPLOYEES IN THE UNIT).

12170-66-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL # 895 (APPLICANT) v. THE COPPER CLIFF PUBLIC SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT COPPER CLIFF, SAVE AND EXCEPT OFFICE STAFF AND TEACHERS WITHIN THE MEANING OF THE TEACHING PROFESSION ACT." (2 EMPLOYEES IN THE UNIT).

12171-66-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA LOCAL 1819 (APPLICANT) v. TRENT GLASS LTD. (RESPONDENT).

UNIT: "ALL GLAZIERS AND GLAZIERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

(AFTER DUE CONSIDERATION OF THE REPRESENTATIONS OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 441).

12173-66-R: LOCAL UNION 1824 OF THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA (APPLICANT) v. TWIN CITY PAINTING & DECORATING (RESPONDENT)

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING IN WILMOT AND WELLESLEY TOWNSHIPS IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

IT HAS BEEN THE RECENT PRACTICE OF THE BOARD TO CONSIDER THE COUNTY OF WATERLOO AS AN APPROPRIATE GEOGRAPHIC AREA. THE APPLICANT HAS BARGAINING RIGHTS FOR THE PAINTERS AND APPRENTICES OF THE RESPONDENT IN THE TOWNSHIPS OF WATERLOO, WOOLWICH AND NORTH DUMFRIES IN THE COUNTY OF WATERLOO. IT NOW SEEKS BARGAINING RIGHTS FOR WILMOT AND WELLESLEY IN THE SAME COUNTY. THE FIVE TOWNSHIPS IN ALL COMPRISE THE COUNTY OF WATERLOO. THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE WORKING IN WILMOT AND WELLESLEY TOWNSHIPS. IN THESE CIRCUMSTANCES THE BOARD FURTHER FINDS THAT ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING IN WILMOT AND WELLESLEY TOWNSHIPS IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

12174-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 1036 (APPLICANT) v. THE CORPORATION OF THE TOWN OF BLIND RIVER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BLIND RIVER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

12176-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) v. CONTEMPORARY WALLS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

12178-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. C. A. PITTS GENERAL CONTRACTOR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIPS OF POITRAS, CLARKSON, JOCKO AND EDDY AND WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

(IN THE SPECIAL CIRCUMSTANCES OF THIS CASE).

12179-66-R: BRICKLAYERS', MASONS' AND PLASTERERS' INTERNATIONAL UNION, LOCAL NO. 33 (APPLICANT) v. LEO VELDHIJS (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY (EXCEPTING THEREFROM THE TOWNSHIPS OF NORMANBY, EGREMONT AND PROTON), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

12180-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. INTERNORTH CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12182-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF LONDON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

12183-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TOWNSHIP OF WESTMINSTER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

12184-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF NORTH DORCHESTER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

12187-66-R: UPHOLSTERERS INTERNATIONAL UNION OF N.A. (APPLICANT) V. SILVERMANS FRAMES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF." (26 EMPLOYEES IN THE UNIT).

12189-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. THE BUDD AUTOMOTIVE COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND SECURITY GUARDS." (21 EMPLOYEES IN THE UNIT).

12190-66-R: LOCAL 12-L, TORONTO, OF THE LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (APPLICANT) V. MANERWOOD PRESS LIMITED (RESPONDENT).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

12191-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BROCK DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT THE SECRETARY-TREASURER AND PERSONS ABOVE THE RANK OF SECRETARY-TREASURER, OFFICE STAFF AND PROFESSIONAL TEACHING STAFF." (7 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 420).

12192-66-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TRENTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (108 EMPLOYEES IN THE UNIT).

12197-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. BRASS-CRAFT CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (28 EMPLOYEES IN THE UNIT).

12198-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. PREMIUM IRON ORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STEEP ROCK LAKE, SAVE AND EXCEPT FOREMEN PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

12202-66-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 268 (APPLICANT) V. CENTRAL PARK LODGE NURSING HOME (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FORT WILLIAM, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT).

12203-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. E. G. M. CAPE CO. (1956) LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

12209-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. W. G. HOW (TORONTO) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

12213-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. MOHAWK CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

THE BOARD NOTES THE SIGNED AGREEMENT OF THE PARTIES ON FILE WITH THE BOARD THAT "PERSONS EMPLOYED LESS THAN FIFTY PER CENT OF THEIR TIME ON REPAIR AND MAINTENANCE OF EQUIPMENT AND/OR PERSONS WHO NORMALLY EXERCISE THE FUNCTIONS OF MANAGEMENT SHALL NOT BE CONSIDERED AS PART OF THE BARGAINING UNIT."

12215-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) v. M. LOEB LIMITED, KIRKLAND LAKE BRANCH (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KIRKLAND LAKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

12221-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. DREW BROWN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS GENERAL WAREHOUSE AT 50 TITAN ROAD IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

12224-66-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE POLICE VILLAGE OF CITY VIEW, CARLETON COUNTY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CITY VIEW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

12226-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) v. DUFFERIN MATERIALS & CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND THOSE PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 183, DATED JULY 21, 1965 AND A COLLECTIVE AGREEMENT BETWEEN A COUNCIL OF TRADE UNIONS AND THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION, DATED JUNE 8, 1964." (15 EMPLOYEES IN THE UNIT).

12238-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. BENNINGTON DEVELOPMENTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF KAPUSKASING ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

12239-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. BEAMER & LATHROP LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

12250-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. OUELLETTE & ROCHEFORT LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

12072-66-R: UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS (APPLICANT) V. GENERAL FOODS, LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS COBOURG PLANT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALARIED TECHNICIANS, EMPLOYEES IN THE RESEARCH CENTRE AND IN THE PLANT LABORATORIES." (511 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	490
NUMBER OF PERSONS WHO CAST BALLOTS	480
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	279
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	200

12059-66-R: RETAIL CLERKS LOCAL 409, CHARTERED BY RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. HARBORD PHARMACY LIMITED CARRYING ON BUSINESS AS LORD'S SUPERVALUE PHARMACIES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS STORES AT PORT ARTHUR AND FORT WILLIAM, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER AND OFFICE STAFF." (25 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	17
NUMBER OF PERSONS WHO CAST BALLOTS	17
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	17
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	0

12079-66-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION No. 1, N.C.C.L.
(APPLICANT) V. PILLAR CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (23 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	23
NUMBER OF PERSONS WHO CAST BALLOTS	23
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	21
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	2

APPLICATIONS FOR CERTIFICATION DISMISSED DURING SEPTEMBER

NO VOTE CONDUCTED

11720-66-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. FRANCON (1966) LIMITED (RESPONDENT). (11 EMPLOYEES)

11864-66-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 1668 (APPLICANT) V. CANADIAN PITTSBURGH INDUSTRIES LIMITED (RESPONDENT) (6 EMPLOYEES).

12021-66-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938, GENERAL TRUCK DRIVERS (APPLICANT) V. KALLA MANUFACTURING & HAULAGE COMPANY (RESPONDENT). (28 EMPLOYEES).

12032-66-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) V. STYLE-RITE BLOUSE COMPANY LIMITED (RESPONDENT). (119 EMPLOYEES).

12073-66-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. XAVIER GENEREUX (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HIS PLANING MILL AT MATHESON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 410).

12076-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. PAUL GIRARD CO. LTD. (RESPONDENT). (17 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 411).

12166-66-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 172 (APPLICANT) V. MILSOM FLOORS LIMITED (RESPONDENT). (4 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 419).

12186-66-R: LOCAL UNION 1590 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO-CLC (APPLICANT) V. TEMPLET CANADA, DIVISION MURRAY-JENSEN MFG. LTD (RESPONDENT). (6 EMPLOYEES).

DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

12080-66-R: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (APPLICANT) V. BELLEVILLE GENERAL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

VOTING CONSTITUENCY: "ALL STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT IN ITS POWER HOUSE AT BELLEVILLE, SAVE AND EXCEPT THE CHIEF ENGINEER." (5 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	2
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	3

DISMISSED SUBSEQUENT TO POST-HEARING VOTE

10369-65-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CANADIAN WESTINGHOUSE COMPANY, LIMITED (RESPONDENT) V. THE DRAFTSMEN ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O. C.L.C. (INTERVENER).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS HEAD OFFICE, 286 SANFORD AVENUE NORTH; ITS OFFICE, 70 SANFORD AVENUE NORTH, AND AT PLANT 1, SANFORD AVENUE NORTH; PLANT 2, ABERDEEN AVENUE AND LONGWOOD ROAD; PLANT 3, 1632 BURLINGTON STREET EAST; ITS OFFICE, 1635 MAIN STREET WEST; AND ITS SERVICE SHOP AND OFFICE, 717 WOODWARD AVENUE, ALL BEING IN THE CITY OF HAMILTON. SAVE AND EXCEPT SHIFT-FOREMAN, SUB-FOREMEN AND ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF SHIFT-FOREMAN, SUB-FOREMAN AND ASSISTANT FOREMAN, SUPERVISORS AND THOSE ABOVE THE RANK OF SUPERVISOR, SECTION HEADS AND THOSE ABOVE THE RANK OF SECTION HEAD, ENGINEERS, ENGINEERING ASSISTANTS AND TRAINEES, TECHNOLOGISTS, TECHNICIANS AND TRAINEES, TECHNICAL ASSISTANTS, CHEMISTS, METALLURGISTS, PHYSICISTS, SALESMEN, SALES REPRESENTATIVES, ANALYSTS, ASSOCIATE ANALYSTS AND ANALYST TRAINEES, SPECIALISTS, ADMINISTRATORS, ASSISTANT ADMINISTRATORS, ASSOCIATE ADMINISTRATORS AND ADMINISTRATIVE ASSISTANTS, PERFORMANCE OBSERVERS, DESIGNERS, PURCHASING AGENTS, BUYERS, ACCOUNTANTS, SECRETARIES TO THE GENERAL FOREMEN

AND SUPERVISORS, SECRETARIES TO THOSE ABOVE THE RANK OF GENERAL FOREMAN AND SUPERVISORS, PERSONS IN THE ASSISTANT-TO-THE PRESIDENT'S OFFICE, PERSONNEL DEPARTMENT, LAW DEPARTMENT, PATENT DEPARTMENT, TREASURY DEPARTMENT, SYSTEMS DEVELOPMENT AND APPLICATION DEPARTMENT; INSURANCE AND TAXES DEPARTMENT, STATEMENTS AND LEDGER SECTION, APPROPRIATIONS SECTION, BUDGET ADMINISTRATION SECTION, SALARIED PAYROLL SECTION AND PROFIT AND LOSS SECTIONS OF THE COMPTROLLER'S DEPARTMENT; TELETYPE OPERATORS, SECURITY GUARDS, NURSES, PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS HIRED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE TRAINING BASIS WITH A SCHOOL OR UNIVERSITY, TRAINEES ON A GRADUATE TRAINING PROGRAM, AND PERSONS AT PRESENT REPRESENTED FOR COLLECTIVE BARGAINING PURPOSES UNDER THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AND IN ADDITION PERSONS IN THE FOLLOWING CLASSIFICATIONS:

COMPTROLLER'S DEPARTMENT:

RECORDS RETENTION Co-ORDINATOR
ACCOUNTING SYSTEMS Co-ORDINATOR
GOVERNMENT ACCOUNTING Co-ORDINATOR
GENERATOR COST ESTIMATOR,
ASSISTANT TO DIVISIONAL ACCOUNTANT
ACCOUNTS PAYABLE CLERK SR.
ACCOUNTING CLERK SR.
ASSISTANT TO ACCOUNTING MANAGER
ASSISTANT TO MANAGER BUDGET ADMINISTRATION
TYPIST TO DIVISION ACCOUNTANT
STENOGRAPHER TO ACCOUNTING MANAGER
STENOGRAPHER TO DIVISION ACCOUNTANT
STENOGRAPHER TO MANAGER, PAYROLL ACCOUNTING

SYSTEMS DIVISION:

CONTRACT REPRESENTATIVE-
SENIOR SALES ASSISTANT
STENOGRAPHER TO MANAGER, INDUSTRIAL SYSTEMS
STENOGRAPHER TO MANAGER, COMMERCIAL SYSTEMS
CONTRACT ADMINISTRATION
STENOGRAPHER TO MANAGER, MARINE & TRANSPORTATION SYSTEMS
STENOGRAPHER TO MANAGER, MILL SYSTEMS
STENOGRAPHER TO MANAGER, DEFENCE ADMINISTRATION SYSTEMS
STENOGRAPHER TO MANAGER, ENGINEERING MILL SYSTEMS
STENOGRAPHER TO MANAGER, SYSTEMS CONTROL ENGINEERING
STENOGRAPHER TO SUPERINTENDENT, MANUFACTURING

POWER TRANSFORMER & CIRCUIT BREAKER DIVISION:

SALES ASSISTANT
SALES ASSISTANT TRAINEE
CLERK STENOGRAPHER TO GENERAL FOREMAN
CLERK STENOGRAPHER TO SUPERVISOR INDUSTRIAL ENGINEERING
CLERK SECRETARY TO MANAGER, ENGINEERING
CLERK STENOGRAPHER TO SUPERVISOR MANUFACTURING ENGINEERING

ELECTRONICS DIVISION:

SENIOR PRODUCTION PLANNER
SYSTEMS CO-ORDINATOR
DRAFTING CO-ORDINATOR
PROJECT CO-ORDINATOR
ASSISTANT BUYER
TECHNICAL AUTHOR
CHIEF INSPECTOR
INSPECTION CONTROLLER
SALES ASSISTANT
TYPIST TO SUPERINTENDENT, MANUFACTURING
STENOGRAPHER TO SUPERINTENDENT, QUALITY CONTROL
STENOGRAPHER TO SUPERINTENDENT, MATERIAL CONTROL &
PROCUREMENT
STENOGRAPHER TO MANAGER, COMMUNICATIONS & CONTROL
ENGINEERING
STENOGRAPHER TO SUPERINTENDENT, INDUSTRIAL & MANUFACTURING
ENGINEERING
STENOGRAPHER TO MANAGER, RADAR & AIRBORNE ENGINEERING
STENOGRAPHER TO MANAGER, FIELD ENGINEERING
STENOGRAPHER TO MANAGER, ANTI-SUBMARINE WEAPONS
ENGINEERING
STENOGRAPHER TO SUPERINTENDENT, MANUFACTURING SERVICES
TYPIST TO SECTION ENGINEER

PURCHASES AND TRAFFIC DEPARTMENT:

STAFF ASSISTANT VALUE ANALYSIS
CHIEF SWITCHBOARD OPERATOR
STAFF ASSISTANT PURCHASES
CONFIDENTIAL MAIL CHAUFFEUR
CLERK SECRETARY TO MANAGER, COMMUNICATIONS &
OFFICE SERVICES

SWITCHGEAR AND CONTROL DIVISION:

HAGAN CONTROLS SERVICE REPRESENTATIVE
ASSISTANT BUYER
PURCHASING SERVICES CO-ORDINATOR
BUDGET CO-ORDINATOR
PRODUCTION PLANNER
SALES ASSISTANT
WRITER ORDER INTERPRETATION
STENOGRAPHER TO MANAGER, MARKETING STANDARD CONTROL
AND SWITCHGEAR DEVICES
STENOGRAPHER TO MANAGER, POWER CONVERSION & TRANSFORMERS
STENOGRAPHER TO MANAGER, QUALITY ASSURANCE
CLERK TYPIST CONFIDENTIAL TO MANAGER, DESIGN &
DEVELOPMENT ENGINEERING
STENOGRAPHER TO SUPERINTENDENT, MANUFACTURING SERVICES
STENOGRAPHER TO MANAGER, COST IMPROVEMENT

STENOGRAPHER TO SUPERINTENDENT, MANUFACTURING ENGINEERING
CLERK TYPIST CONFIDENTIAL TO MANAGER, ENGINEERING SERVICES
CLERK TYPIST CONFIDENTIAL TO SECTION MANAGER, ENGINEERING

TURBINE AND GENERATOR DIVISION:

STAFF ASSISTANT
SALES ASSISTANT
ORDER SERVICE ASSISTANT
PRODUCTION CONTROL Co-ORDINATOR
MATERIAL CONTROL Co-ORDINATOR
PLANNING AND SCHEDULING Co-ORDINATOR
M. I. Co-ORDINATOR
PROCESS PLANNER
MATERIAL HANDLING Co-ORDINATOR
SHOP TOOLING Co-ORDINATOR
ROUTER ESTIMATOR M.P.A.
STENOGRAPHER TO MANAGER, SALES DEPARTMENT
CLERK STENOGRAPHER TO SUPERVISOR TOOL ENGINEERING
STENOGRAPHER TO MANAGER, ENGINEERING
CLERK STENOGRAPHER TO PURCHASING AGENT
CLERK STENOGRAPHER TO SUPERINTENDENT, QUALITY CONTROL
CLERK STENOGRAPHER TO SUPERINTENDENT, MANUFACTURING
SERVICES
CLERK STENOGRAPHER TO GENERAL FOREMAN, FABRICATION AND
PUNCH SHOP AND
- GENERAL FOREMAN, ASSEMBLY AND COIL
WINDING AND
- GENERAL FOREMAN, MACHINING DEPARTMENTS
CLERK STENOGRAPHER TO SUPERINTENDENT, PLANT MAINTENANCE
CLERK STENOGRAPHER TO SUPERINTENDENT, PRODUCTION
CLERK STENOGRAPHER TO SUPERVISOR, FACTORY ENGINEERING
CLERK SECRETARY TO MANAGER, MANUFACTURING

ELECTRONIC TUBE DIVISION:

STENOGRAPHER TO MANAGER, MANUFACTURING

FIELD INSTALLATION DEPARTMENT:

CLERK STOREKEEPER AND CONTROL

AIR BRAKE DIVISION:

MACHINE TOOLS Co-ORDINATOR
TECHNICAL SALES ASSISTANT
CLERK SECRETARY TO MANAGER, MARKETING, PNEUMATIC
HYDRAULIC & WESTOFLEX PRODUCTS

APPLIANCE DIVISION:

SENIOR PRODUCTION PLANNER

APPLIANCE DIVISION (CONT'D)

DISPATCHER SERVICE CENTRE
STENOGRAPHER TO MANAGER, MERCHANDISING SERVICES
STENOGRAPHER TO MANAGER, PRODUCT DEPARTMENT
STENOGRAPHER TO MANAGER, ENGINEERING
STENOGRAPHER TO PURCHASING AGENT
STENOGRAPHER TO SUPERINTENDENT, QUALITY CONTROL
STENOGRAPHER TO MANAGER, ADVERTISING & PROMOTION

OPERATIONS DEPARTMENT:

ASSISTANT ACCOUNTANT
APPARATUS DISTRICT STOCK CO-ORDINATOR
STENOGRAPHER TO ACCOUNTANT

MOTOR DIVISION:

TECHNICAL SALES ASSISTANT
PRODUCTION CONTROL CO-ORDINATOR
OPERATION AND PROCESS PLANNER
STENOGRAPHER TO SUPERVISOR, MANUFACTURING ENGINEERING
CLERK STENOGRAPHER TO GENERAL SUPERINTENDENT,
MANUFACTURING

SERVICE SHOP & OFFICE, WOODWARD AVENUE:

ADMINISTRATIVE CLERK
CO-ORDINATOR COST IMPROVEMENT
STENOGRAPHER RENEWAL PARTS TO MANAGER, RENEWAL PARTS
TECHNICAL SERVICES
STENOGRAPHER RECEPTIONIST TO MANAGER, APPARATUS SERVICE,
HAMILTON DISTRICT

APPARATUS GROUP STAFF:

HEADQUARTERS SPECIFICATIONS CO-ORDINATOR
REPRODUCTION PHOTOGRAPHER
STENOGRAPHER TO MANAGER, HEADQUARTERS ENGINEERING SERVICES
CLERK ENGINEERING TO MANAGER, REPRODUCTION & TECHNICAL
MANUALS DEPARTMENT
STENOGRAPHER TO MANAGER, APPARATUS MARKETING SERVICES
STENOGRAPHER TO DIRECTOR, APPARATUS ADVERTISING, APPARATUS SALES
STENOGRAPHER TO DIRECTOR, COST REDUCTION
SECRETARY & STATISTICAL CLERK TO DIRECTOR OF MANUFACTURING,
APPARATUS PRODUCTS." (852 EMPLOYEES IN THE UNIT

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

780

NUMBER OF PERSONS WHO CAST BALLOTS

739

NUMBER OF SPOILED BALLOTS

3

BALLOTS SEGREGATED AND NOT COUNTED

3

NUMBER OF BALLOTS MARKED IN FAVOUR

OF APPLICANT

389

NUMBER OF BALLOTS MARKED AGAINST

APPLICANT

344

(SEE INDEXED ENDORSEMENT PAGE 372).

11141-65-R: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (APPLICANT) V. RIVARD CLEANERS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE STAFF, DRIVER SALESMEN, RETAIL STORE EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(21 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	21
NUMBER OF PERSONS WHO CAST BALLOTS	21
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	20

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS RETAIL STORES AT WINDSOR, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	4

11880-66-R: INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA) (APPLICANT) V. N. MORISSETTE DIAMOND DRILLING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL DIAMOND DRILLERS AND HELPERS EMPLOYED BY THE RESPONDENT IN THE TOWNSHIPS OF LEVACK, FOY, MACLENNAN AND DENISON AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (52 EMPLOYEES IN THE UNIT).

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT REPAIR CREWS AND SERVICE MEN ARE NOT INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	44
NUMBER OF PERSONS WHO CAST BALLOTS	44
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	12
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	32

11889-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. BELL CITY FOUNDRY (BRANTFORD) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (43 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	38
NUMBER OF PERSONS WHO CAST BALLOTS	38
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	28

11924-66-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. DIANA SWEET LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT COACH'N FOUR DINING ROOM, DON MILLS SHOPPING CENTRE, DON MILLS, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	5
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	1

11927-66-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,, CHAUFFEURS, WAREHOUSE AND HELPERS OF AMERICA (APPLICANT) V. S G GENERAL CLEANING SERVICE Co., (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	6

11965-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NATIONAL SLAG LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT COLBORNE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	8
NUMBER OF PERSONS WHO CAST BALLOTS	8
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	7

11982-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. HUDSON BAY DIECASTINGS LTD. (RESPONDENT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CHINGUACOUSY TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (26 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	29
NUMBER OF PERSONS WHO CAST BALLOTS	29
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	5
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	24

12058-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. CHAMBERS FOODS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (34 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	32
NUMBER OF PERSONS WHO CAST BALLOTS	31
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	13
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	18

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING SEPTEMBER

12163-66-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. B. F. KLASSEN CONSTRUCTION LTD. (RESPONDENT) (8 EMPLOYEES).

12167-66-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ST. THOMAS CITY DAIRY LIMITED (RESPONDENT). (27 EMPLOYEES).

12168-66-R: THE SUDBURY AND DISTRICT GENERAL WORKERS' UNION LOCAL 902 OF THE INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS (APPLICANT) V. NICKEL BELT HOTEL (RESPONDENT). (5 EMPLOYEES).

12177-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CARR'S ELECTRIC LIMITED (RESPONDENT). (7 EMPLOYEES).

12207-66-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 804, (AFL-CIO-CLC) (APPLICANT) V. MUIRHEAD COMMUNICATIONS LIMITED (RESPONDENT). (14 EMPLOYEES).

12237-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. STEED & EVANS LIMITED (RESPONDENT). (1 EMPLOYEE).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING SEPTEMBER

12139-66-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) V. J. J. TURNER COMPANY LIMITED (RESPONDENT). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING SEPTEMBER

12050-66-U: THE INTERNATIONAL NICKEL COMPANY OF CANADA, LIMITED (APPLICANT) V. M. MORROW, ET AL (RESPONDENTS). (WITHDRAWN).

12051-66-U: CRUMP SHEET METALS LIMITED (APPLICANT) V. JOHN HUMENIUK, ET AL (RESPONDENTS). (WITHDRAWN).

12217-66-U: TAYLOR WOODROW OF CANADA LIMITED (APPLICANT) V. INTERNATIONAL HOD CARRIERS', BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING SEPTEMBER

11787-66-U: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) V. TILCO PLASTICS LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 422).

12045-66-U: CRUMP SHEET METALS LIMITED (APPLICANT) V. PETER HASKEY, DONALD McMACHEL, ARTHUR BODEN, JAMES E. HUGHES, JOHN BOWIE, RICHARD T. WOOD, A. BONNARD, WILLIAM WALLACE, KEITH YAKELEY, LARRY L. MYERS, WILLIAM LYMAN, JACQUES ROBITAILLE, WILLIAM WALLACE MAY, JOHN BATZ, JAMES TAYLOR, JAMES LESLIE SHERRATT, O. ZANNESE, WILLIAM GOUGH, ALFRED J. COMPTON, NORMAN CLIFF, HARRY BERGA, JOSEPH HAWKINS, R. BELISLE, E. ROBINSON, GEORGE BOUDAH, BERT PELL, FRED MASON, DAVID J. MONTGOMERY, WALTER PENDRIG, KEITH SWEERS, ROBERT CORKEN, ALLAN F. BUDWAY, VICTOR BLACKWELL, WILLIAM BATES, PATRICK WILLIAMS, JAMES V. AGNEW, DONALD EAMES, WALTER A. SILVER, N. HACHEY, A. STEWART, RONALD SCOTT, NEIL PRICE, WILLIS NEWTON, T. HANNIGAN, O. FLETCHER, ALBERT

RENTON, MR. L. WILLIAMS, ROY FOX, WILLIAM FARLEY, TOM MAXWELL, TED MAJOOR, A. LAMOUREUX, R. CAPPADOCIA, JOHN PAUL COOK, WILLIAM FARRELL, W. E. M. HARRISON, PATRICK J. DONOVAN, F. BAHR. (RESPONDENTS). (GRANTED).

12054-66-U: CRUMP SHEET METALS LIMITED (APPLICANT) V. JOHN HUMENIUK, ET AL (RESPONDENTS). (WITHDRAWN).

12068-66-U: TETRAD CONSTRUCTION LIMITED (APPLICANT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL 30 (RESPONDENT) V. ERNEST FERGUSON (RESPONDENT ADDED BY THE BOARD). (DISMISSED).

12128-66-U: PRINTING SPECIALITIES AND PAPER PRODUCTS UNION, LOCAL 466 (APPLICANT) V. DATA BUSINESS FORMS LIMITED (RESPONDENT). (GRANTED).

12141-66-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. COOPER-WEEKS LIMITED (RESPONDENT). (WITHDRAWN).

12216-66-U: REDFERN CONSTRUCTION COMPANY LIMITED (APPLICANT) V. INTERNATIONAL HOD CARRIERS', BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 AND NORMAN PIKE AND J. STEFANINI (RESPONDENTS). (WITHDRAWN).

12218-66-U: TAYLOR WOODROW OF CANADA LIMITED (APPLICANT) V. INTERNATIONAL HOD CARRIERS', BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 AND G. GALLAGHER (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

SEPTEMBER

11730-66-U: ETHEL YOUNG (COMPLAINANT) V. ANDREW MALCOLM FURNITURE CO. LTD. LISTOWEL, ONT. (RESPONDENT).

12035-66-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. ANTHONY'S CARTAGE (RESPONDENT).

12063-66-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. DREW BROWN LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 431).

12110-66-U: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 141 (COMPLAINANT) V. THE CANADIAN LINEN SUPPLY (ONTARIO) LIMITED, LONDON (RESPONDENT).

12210-66-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. BELL CITY FOUNDRY (BRANTFORD) LIMITED (RESPONDENT).

12236-66-U: INTERNATIONAL CHEMICAL WORKERS UNION (COMPLAINANT) V. TONE CRAFT PAINT AND VARNISH COMPANY LIMITED (RESPONDENT).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING SEPTEMBER

11892-66-M: LOCAL 545, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TOWNSHIP OF SCARBOROUGH (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 433).

11919-66-M: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. HERB. PA. TRANSPORT COMPANY LIMITED (RESPONDENT).

REFERENCE TO BOARD PURSUANT TO SECTION 79A OF THE ACT DISPOSED OF DURING SEPTEMBER

12150-66-M: CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 983 (TRADE UNION) V. THE HYDRO ELECTRIC COMMISSION OF THE TOWNSHIP OF NEPEAN (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 437).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

12131-66-R: LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) (APPLICANT) V. FERGUS CABLES LIMITED (RESPONDENT) V. UNITED ELECTRIC RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 440).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - PROSECUTION

12044-66-U: CRUMP SHEET METALS LIMITED (APPLICANT) V. PETER HASKEY, DONALD McMACH, ARTHUR BODEN, JAMES E. HUGHES, JOHN BOWIE, RICHARD T. WOOD, A. BONNARD, KEITH YAKE, LARRY L. MYERS, WILLIAM LYMAN, JACQUES ROBITAILLE, WILLIAM WALLACE MAY, JOHN BATZ, JAMES TAYLOR, O. ZANNESE, WILLIAM GOUGH, ALFRED J. COMPTON, NORMAN CLIFF, HARRY BERGA, JOSEPH HAWKINS, R. BELISLE, E. ROBINSON, GEORGE BOUDAH, BERT PELL, FRED MAS, DAVID J. MONTGOMERY, WALTER PENDRIGH, ROBERT CORKEN, ALLAN F. BUDWAY, VICTOR BLACKWELL, PATRICK WILLIAMS, JAMES V. AGNEW, DONALD EAMES, WALTER A. SILVER, N. HACHEY, A. STEWART, RONALD SCOTT, NEIL PRICE, WILLIS NEWTON, T. HANNIGAN, O. FLETCHER, ALBERT RENTON, MR. L. WILLIAMS, ROY FOX, WILLIAM FARLEY, TOM MAXWELL, TED MAJOOR, LAMOUREUX, R. CAPPADOCIA, JOHN PAUL COOK, WILLIAM FARRELL, W.E.M. HARRISON, PATRICIA J. DONOVAN, F. BAHR (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 440).

INDEXED ENDORSEMENTS - CERTIFICATION

10369-65-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)
(APPLICANT) V. CANADIAN WESTINGHOUSE COMPANY, LIMITED (RESPONDENT) V. THE
DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL
ENGINEERS, A.F.L.-C.I.O. C.L.C. (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND
D. ALAN PAGE.

APPEARANCES AT THE HEARING: R. RUSSELL, S. FARKAS AND J. D. MCCOSH FOR THE
APPLICANT, R. V. HICKS, Q.C., F. G. HAMILTON, J. W. HENLEY AND E. A. TAYLOR
FOR THE RESPONDENT, NO ONE FOR THE INTERVENER, NO ONE FOR THE OBJECTORS.

DECISION OF THE BOARD: (SEPTEMBER 30, 1966).

1. THE BOARD BY ITS DECISION DATED MAY 25TH, 1966 DIRECTED THE TAKING OF
A REPRESENTATION VOTE IN THIS MATTER OF THE EMPLOYEES OF THE RESPONDENT IN A UNIT
FOUND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING IN PARAGRAPH 2 OF THAT DECISION.
THE VOTE WAS TAKEN ON JUNE 23RD, 1966.

2. THE APPLICANT AND THE RESPONDENT BOTH FILED STATEMENTS OF OBJECTION TO
THE REPORT OF THE RETURNING OFFICER DATED JUNE 23RD. AT THE BOARD HEARING ON
SEPTEMBER 6TH WHICH WAS HELD FOR THE PURPOSE OF ENTERTAINING THE REPRESENTATIONS
OF THE PARTIES, THE RESPONDENT WITHDREW ITS OBJECTIONS. THE PARTIES THEREUPON
ADDUCED EVIDENCE AND MADE THEIR SUBMISSIONS ON THE OBJECTIONS FILED BY THE APPLI-
CANT.

3. AT THE TAKING OF THE VOTE ON JUNE 23RD, A CHALLENGE WAS MADE AS TO THE
ELIGIBILITY OF E. SAINSBURY, R.W. BIEHLER AND P. HALL TO VOTE. THE RETURNING
OFFICER RULED THAT THEY BE PERMITTED TO CAST BALLOTS AND THEIR BALLOTS BE SEGREGATED
PENDING A DECISION OF THE BOARD ON THE QUESTION OF THEIR ELIGIBILITY. AT THE HEARING
ON SEPTEMBER 6TH, THE PARTIES AGREED TO THE FOLLOWING STATEMENT OF FACT WITH REGARD
TO THE THREE NAMED PERSONS:

- (1) R. W. BIEHLER ON THE DATE THE VOTE WAS
DIRECTED WAS CLASSIFIED AS A TRAINEE
ON A GRADUATE TRAINING PROGRAM, WHICH
CLASSIFICATION IS OUTSIDE THE SCOPE OF
THE BARGAINING UNIT. PRIOR TO THE TAKING
OF THE VOTE HE WAS TRANSFERRED TO THE
POSITION OF PRODUCTION CONTROLLER WHICH
POSITION FALLS WITHIN THE SCOPE OF THE
BARGAINING UNIT.
- (2) P. HALL ON THE DATE THE VOTE WAS DIRECTED
WAS EMPLOYED IN AN OCCUPATIONAL CLASSIFICA-
TION OUTSIDE THE BARGAINING UNIT. PRIOR TO
THE TAKING OF THE VOTE HE WAS TRANSFERRED TO
A CLASSIFICATION WITHIN THE BARGAINING UNIT.
- (3) E. SAINSBURY ON THE DATE THE VOTE WAS
DIRECTED WAS AN EMPLOYEE IN THE BARGAINING
UNIT. PRIOR TO THE TAKING OF THE VOTE HE

WAS PROMOTED TO THE POSITION OF ASSISTANT FOREMAN WHICH POSITION IS OUTSIDE THE SCOPE OF THE BARGAINING UNIT.

4. IN PARAGRAPH 2 OF THE DECISION OF MAY 25TH, 1966 THE BOARD MADE ITS STANDARD DIRECTION FOR THE TAKING OF A REPRESENTATION VOTE WHICH READS AS FOLLOWS:

A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

5. AS INDICATED ABOVE, IN ORDER TO BE ELIGIBLE TO VOTE A PERSON MUST HAVE BEEN AN EMPLOYEE IN THE BARGAINING UNIT ON THE DATE THE VOTE WAS DIRECTED. BIEHLER AND HALL WERE NOT EMPLOYEES IN THE BARGAINING UNIT ON MAY 25TH AND THEREFORE FAIL TO FULFIL THIS ESSENTIAL PREREQUISITE. THE BOARD ACCORDINGLY FINDS THAT BIEHLER AND HALL WERE NOT ELIGIBLE TO VOTE IN THE REPRESENTATION VOTE TAKEN ON JUNE 23RD AND DIRECTS THAT THEIR BALLOTS NOT BE COUNTED.

6. THE BOARD'S STANDARD DIRECTION FOR THE TAKING OF A REPRESENTATION VOTE, AS QUOTED ABOVE, CITES ONLY TWO INSTANCES IN WHICH A PERSON WHO WAS AN EMPLOYEE IN THE BARGAINING UNIT ON THE DATE THE VOTE WAS DIRECTED FORFEITS HIS ELIGIBILITY TO VOTE, NAMELY, WHERE HE VOLUNTARILY TERMINATES HIS EMPLOYMENT OR IS DISCHARGED FOR CAUSE BEFORE THE DATE THE VOTE IS TAKEN. THE BOARD, HOWEVER, HAS NOT ATTEMPTED IN ITS STANDARD DIRECTION TO DEFINE EXHAUSTIVELY ALL OF THE CONTINGENCIES UNDER WHICH A PERSON WHO WAS AN EMPLOYEE IN THE BARGAINING UNIT WHEN THE VOTE WAS DIRECTED WOULD CEASE TO BE ELIGIBLE TO VOTE. THE BOARD HAS CONSISTENTLY INTERPRETED ITS DIRECTION TO MEAN THAT A PERSON WHO, BETWEEN THE DATE OF THE DIRECTION AND THE DATE OF THE VOTE, HAS CEASED TO BE A MEMBER OF THE BARGAINING UNIT, IS DISQUALIFIED FROM PARTICIPATING IN THE VOTE, WHETHER BECAUSE OF VOLUNTARY TERMINATION OF EMPLOYMENT, DISCHARGE FOR CAUSE, INDEFINITE LAY-OFF IN SOME CIRCUMSTANCES, OR TRANSFER TO A POSITION OUT OF THE BARGAINING UNIT. STATED ANOTHER WAY, THE POLICY OF THE BOARD IS THAT A PERSON MUST BE AN EMPLOYEE IN THE BARGAINING UNIT BOTH ON THE DATE THE VOTE IS DIRECTED AND ON THE DATE OF THE TAKING OF THE VOTE IN ORDER TO BE ELIGIBLE TO CAST A BALLOT. SAINSBURY, HOWEVER, NOT ONLY WAS TRANSFERRED TO A POSITION OUTSIDE THE BARGAINING UNIT BUT ALSO WAS PROMOTED TO A POSITION IN WHICH THE PARTIES AGREE HE EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. SAINSBURY THEREFORE CEASED TO BE AN EMPLOYEE WITHIN THE MEANING OF THE ACT WHEN HE BECAME AN ASSISTANT FOREMAN. THE BOARD ACCORDINGLY FINDS THAT SAINSBURY WAS NOT ELIGIBLE TO VOTE IN THE REPRESENTATION VOTE TAKEN ON JUNE 23RD AND DIRECTS THAT HIS BALLOT NOT BE COUNTED. THE BOARD FURTHER DIRECTS THAT SAINSBURY'S NAME BE STRUCK OFF THE REVISED VOTERS' LIST.

7. THE NAMES OF BIEHLER AND HALL WERE NOT ON THE REVISED VOTERS' LIST. AFTER REMOVING SAINSBURY'S NAME, THE NUMBER OF NAMES OF PERSONS ON THE REVISED VOTERS' LIST IS 779. THE NUMBER OF BALLOTS CAST IN FAVOUR OF THE APPLICANT BY

PERSONS WHOSE NAMES APPEAR ON THE REVISED VOTERS' LIST IS 389. THIS FIGURE REPRESENTS NOT MORE THAN THE FIFTY PER CENT OF THE BALLOTS CAST BY THOSE WHO WERE ELIGIBLE TO VOTE, WHICH PERCENTAGE IS REQUIRED FOR CERTIFICATION.

8. THE APPLICANT FURTHER ALLEGES THAT FIVE EMPLOYEES, V. BAYNE, M. BRUCE, L. MAJENSKY, M. MOTUS AND C. OATES WERE DENIED AN OPPORTUNITY TO CAST BALLOTS IN THE REPRESENTATION VOTE ON JUNE 23RD.

9. THE EVIDENCE OF MAY BRUCE, ONE OF THE FIVE NAMED EMPLOYEES, IS THAT SHE TOGETHER WITH THE FOUR OTHER NAMED EMPLOYEES AND A SUPERVISOR ARE EMPLOYED IN THE CENTRAL REPRODUCTION DEPARTMENT OF THE RESPONDENT. THE DEPARTMENT IS HOUSED IN A SMALL SEPARATE BUILDING CONSISTING OF A BASEMENT AND ONE STOREY. THE BUILDING IS IN THE MIDST OF A COMPLEX OF BUILDINGS WHICH COMPRISES THE WEST PLANT OR PLANT NO. 2 OF THE RESPONDENT. ACCORDING TO THE EVIDENCE OF MAY BRUCE AND WILLIAM JOHNSTONE, A SECURITY GUARD IN THE EMPLOY OF THE RESPONDENT, THE BUILDING IS COMMONLY KNOWN AS THE CRD BUILDING. THE EVIDENCE OF E. A. TAYLOR, STAFF ASSISTANT TO THE VICE-PRESIDENT OF PERSONNEL, IS THAT THE EMPLOYEES CONCERNED ARE PART OF HEADQUARTERS ENGINEERING SERVICES AND THAT THE BUILDING HOUSING THEM IS OFFICIALLY KNOWN AS THE HEADQUARTERS ENGINEERING SERVICES BUILDING.

10. SUBSEQUENT TO THE BOARD'S DIRECTIVE ON MAY 25TH, THE PARTIES MET FOR THE PURPOSE OF ARRANGING THE TAKING OF THE REPRESENTATION VOTE. THE APPLICANT REQUESTED THAT THE RESPONDENT POST SOME 59 COPIES OF FORM 48, NOTICE OF TAKING OF VOTE, IN LOCATIONS SPECIFIED BY THE APPLICANT. THE RESPONDENT COMPLIED WITH THIS REQUEST AND 26 OF THE FORM 48'S WERE POSTED IN THE WEST PLANT OR PLANT NO. 2. THE NOTICES WERE POSTED ON COMPANY BULLETIN BOARDS THROUGHOUT THE PLANT AND IN OTHER LOCATIONS WHICH WOULD ATTRACT THE ATTENTION OF THE EMPLOYEES. THE BUILDING WHERE THE FIVE EMPLOYEES IN QUESTION ARE LOCATED WAS NOT DESIGNATED BY THE APPLICANT AS A PLACE IN WHICH TO POST A FORM 48, ALTHOUGH THERE WAS A BULLETIN BOARD IN THE BASEMENT OF THE BUILDING. ACCORDING TO TAYLOR THIS WAS A DEPARTMENTAL AS OPPOSED TO A COMPANY BULLETIN BOARD. NO FORM 48 WAS POSTED IN THAT BUILDING. THE POSTING OF THE FORMS WAS DONE APPROXIMATELY A WEEK PRIOR TO THE TAKING OF THE VOTE ON JUNE 23RD.

11. THE FORM 48 IN THE INSTANT CASE IS A LARGE DOCUMENT MEASURING SOME 14 INCHES IN WIDTH AND 44 INCHES IN LENGTH. THE TITLE ACROSS THE TOP OF THE FORM "NOTICE OF TAKING OF VOTE" IS IN BROAD BLACK PRINT AN INCH AND A HALF IN HEIGHT AND IS SET AGAINST A WHITE BACKGROUND. BELOW THE MAIN HEADING ARE A NUMBER OF SMALLER HEAVY BLACK PRINTED HEADINGS, INCLUDING ONE TITLED - "ELIGIBLE VOTERS" AND ANOTHER TITLED "TIMES AND PLACES OF TAKING OF VOTE". UNDER THE FORMER HEADING IS A DESCRIPTION OF THE BARGAINING UNIT AS CONTAINED IN THE BOARD'S DECISION OF MAY 25TH, 1966. BELOW THE LATTER HEADING IS THE DATE "JUNE 23RD, 1966". IMMEDIATELY BENEATH THE DATE, IN TWO COLUMNS, ARE LISTED THE POLLS, NUMBERING FROM 1 TO 9. OPPOSITE EACH POLL NUMBER, EMPLOYEES ELIGIBLE TO VOTE AT EACH POLL ARE DESIGNATED BY THEIR PLACE OF WORK. THE LOCATION OF THE POLL AND THE POLLING HOURS ALSO ARE INDICATED. THE DESCRIPTION OPPOSITE POLL 9 READS AS FOLLOWS:

PLANT No. 2 - ALL OTHER

THE EMPLOYEES IN PLANT NO. 2, OTHER THAN THOSE WORKING IN W.A., W.X., W.T. BUILDINGS AND THE ELECTRONIC TUBE DIVISION, WHO

ARE ELIGIBLE TO VOTE CAN DO SO IN THE
ENGINEERING DEPARTMENT CONFERENCE ROOM
LOCATED IN THE SOUTHEAST CORNER OF THE
4TH FLOOR OF W.E. BUILDING. THIS POLL TO
BE OPEN FROM 8:30 TO 10.30 A.M.

12.

POSTED WITH EACH FORM 48 WAS A LIST CONTAINING THE NAMES AND CLASSIFICATIONS OF ALL OF THE EMPLOYEES WHO WERE ELIGIBLE TO VOTE ACCORDING TO THE POLLING STATION AT WHICH THEY WERE TO CAST THEIR BALLOTS. THE NAMES OF THE FIVE EMPLOYEES WITH WHOM WE ARE CONCERNED APPEARED ON THE LIST AS ELIGIBLE VOTERS IN POLL 9 AND WERE CLASSIFIED AS HEAD QUARTERS ENGINEERING SERVICES. THE FORM 48 AND THE ACCOMPANYING LIST OF ELIGIBLE EMPLOYEES WERE BOTH APPROVED BY THE APPLICANT AND THE RESPONDENT PRIOR TO THE POSTING OF THESE DOCUMENTS. ANY ERRORS OR OMISSIONS IN THE VOTERS' LIST THAT WERE SUBSEQUENTLY DISCOVERED WERE CORRECTED ON THE POSTED LISTS. ACCORDING TO TAYLOR, ON A COMPLAINT BY THE APPLICANT, THE NAME OF MAJENSKY (ONE OF THE EMPLOYEES IN QUESTION) WHOSE NAME HAD BEEN OMITTED IN ERROR, WAS ADDED TO THE VOTERS' LIST.

13.

THERE WAS FILED WITH THE BOARD AS AN EXHIBIT COPIES OF SIX BULLETINS ISSUED BY THE APPLICANT RESPECTIVELY DATED JUNE 3RD, 9TH 14TH, 15TH, 16TH AND 17TH ALL OF WHICH MAKE REFERENCE TO THE PENDING REPRESENTATION VOTE. THE APPLICANT ADMITS THAT THESE BULLETINS WERE WIDELY CIRCULATED. AN EXTRACT FROM THE BULLETIN DATED JUNE 9TH READS:

NOTICE WILL BE POSTED AS TO WHERE EACH
POLL IS TO BE LOCATED ALONG WITH THE
TIMES THE POLLS WILL BE OPEN FOR VOTING
PURPOSES. NAMES OF ALL PEOPLE ELIGIBLE
TO VOTE AT EACH POLL WILL BE POSTED
ALPHABETICALLY. THE LIST SHALL CONTAIN
THE NAME, BADGE NUMBER AND CLASSIFICATION
OF THE EMPLOYEE.

THE BULLETIN DATED JUNE 17TH IN PART READS:

BOARD NOTICES

THE ONTARIO LABOUR RELATIONS BOARD HAS
NOW POSTED NOTICES SETTING OUT NECESSARY
INFORMATION CONCERNING THE VOTE. ALSO
POSTED IS A VOTERS LIST. IT IS YOUR
RIGHT TO READ THE BOARD'S NOTICE AND CHECK
THE VOTERS LIST DURING WORKING HOURS.
CONTACT YOUR STEERING COMMITTEE MEMBER OR
THE UNION OFFICE IF YOU ARE IN DOUBT OR
HAVE ANY QUESTIONS.

14.

MAY BRUCE TESTIFIED THAT WHILE SHE WAS AWARE THAT THE REPRESENTATION VOTE WAS TAKING PLACE ON JUNE 23RD, SHE DID NOT KNOW WHETHER SHE WAS ELIGIBLE TO VOTE, OR WHERE OR WHEN TO VOTE. HER EVIDENCE IS THAT NO MENTION OF THE VOTE WAS MADE TO HER BY HER SUPERVISOR ON JUNE 23RD AND THAT SHE ONLY LEARNED THAT THE VOTE ALREADY HAD TAKEN PLACE IN THE MORNING, DURING HER LUNCH BREAK ON THAT DAY. SHE

DENIED THAT SHE HAD EVER SEEN ANY OF THE FORM 48'S ALTHOUGH SHE ADMITTED THAT ON BOTH JUNE 22ND AND 23RD SHE HAD GONE ON A NUMBER OF OCCASIONS TO THE ENGINEERING DEPARTMENT ON THE 4TH FLOOR OF THE W. E. BUILDING (WHICH IS THE LOCATION OF POLL 9). ACCORDING TO THE EVIDENCE OF THE SECURITY GUARD JOHNSTONE, WHO POSTED THE FORM 48'S ON THE ROUTE MRS. BRUCE FOLLOWED IN GOING TO THE ENGINEERING DEPARTMENT AND RETURNING TO HER OWN PLACE OF WORK, SHE WOULD PASS BY SEVEN LOCATIONS WHERE THE NOTICE OF TAKING OF VOTE WAS POSTED. THERE IS NO EVIDENCE AS TO THE KNOWLEDGE OF THE VOTE POSSESSED BY THE REMAINING FOUR EMPLOYEES CONCERNED, NOR IS THERE ANY EVIDENCE OF THEIR MOVEMENTS IN THE PLANT DURING THE DAYS PRIOR TO THE TAKING OF THE VOTE ON JUNE 23RD.

15. D. B. KAY AN OFFICER OF THE BOARD, WAS THE RETURNING OFFICER AT POLL 9 ON JUNE 23RD. HELEN MCCOOL, THE SCRUTINEER FOR THE APPLICANT AT POLL 9 TESTIFIED THAT IN EXAMINING THE VOTERS LIST AT 10:00 A.M. SHE NOTICED THAT NONE OF THE FIVE EMPLOYEES CLASSIFIED AS HEADQUARTERS ENGINEERING SERVICES HAD CAST THEIR BALLOTS. HER EVIDENCE IS THAT SHE MENTIONED THE FAILURE OF THESE EMPLOYEES TO VOTE TO KAY AT THAT TIME AND AGAIN AT 10:15 A.M. AND AT 10:25 A.M. SHE TESTIFIED THAT SHE DID NOT KNOW WHERE THE EMPLOYEES WERE LOCATED AND ASKED KAY TO FIND OUT IF THEY WERE IN PLANT NO. 2. MRS. MCCOOL STATED THAT AN OFFICIAL OF THE RESPONDENT CAME TO THE POLL AT 10:25 A.M. AND KAY ASKED HIM IF THE FIVE EMPLOYEES WERE IN THE W.E. BUILDING (WHERE THE POLL WAS LOCATED) AND IF THEY KNEW THEY HAD A VOTE AND WHERE TO VOTE. HER EVIDENCE IS THAT THE OFFICIAL ANSWERED AFFIRMATIVELY TO ALL OF HIS QUESTIONS. ACCORDING TO HER TESTIMONY KAY THEN INFORMED HER THAT THAT WAS ALL HE COULD DO.

16. HELEN HOATH, THE SCRUTINEER FOR THE RESPONDENT AT POLL 9, TESTIFIED THAT MRS. MCCOOL ONLY MENTIONED THE EMPLOYEES CLASSIFIED AS HEADQUARTERS ENGINEERING SERVICES ONCE, AND THAT WAS AT 10:30 A.M. WHEN THE RETURNING OFFICER, KAY, WAS ABOUT TO CLOSE THE POLL. HER EVIDENCE IS THAT MR. CALDWELL, AN OFFICIAL OF THE RESPONDENT, ABOUT THAT TIME CAME INTO THE POLLING AREA. SHE TESTIFIED THAT KAY ASKED HIM WHERE THE EMPLOYEES WERE LOCATED, TO WHICH CALDWELL REPLIED "OUT IN BACK OF THE W.S. BUILDING". MRS. HOATH STATED THAT KAY ASKED NO FURTHER QUESTIONS. SHE ADMITTED THAT SHE DID NOT KNOW WHERE HEADQUARTERS ENGINEERING SERVICES WAS LOCATED AND THAT SHE KNEW OF THE BUILDING WHERE THE FIVE EMPLOYEES WORKED AS THE CRD BUILDING.

17. JOHN CALDWELL, A SUPERVISOR IN THE EMPLOY OF THE RESPONDENT, TESTIFIED THAT HE HAD GONE TO POLL 9 SHORTLY AFTER 10:30 A.M. TO PROVIDE THE RETURNING OFFICER WITH A LIST OF EMPLOYEES IN POLL 9 WHO WERE ABSENT DURING THE TAKING OF THE VOTE. CALDWELL'S EVIDENCE IS THAT KAY REFERRED TO THE EMPLOYEES ON THE VOTERS LIST CLASSIFIED AS HEADQUARTERS ENGINEERING SERVICES AND ASKED WHERE THEY WORKED. CALDWELL STATED THAT HE TOLD KAY THAT THEY WERE IN ANOTHER BUILDING IN REAR OF THE ONE WHERE KAY WAS LOCATED. CALDWELL TESTIFIED THAT HE WAS FAMILIAR WITH THE LOCATION OF HEADQUARTERS ENGINEERING SERVICES AND HAD BEEN THERE CHECKING ATTENDANCE JUST PRIOR TO COMING TO POLL 9.

18. THE APPLICANT SUBMITS THAT, ACTING WITHIN THE LIMITATIONS OF ITS KNOWLEDGE, IT DID EVERYTHING POSSIBLE TO TRY TO ENSURE THAT ALL OF THE EMPLOYEES WHO WERE ELIGIBLE TO CAST BALLOTS WERE MADE AWARE OF THE RELEVANT INFORMATION CONCERNING THE TAKING OF THE VOTE. THE APPLICANT MAINTAINS, HOWEVER, THAT IT WAS UNAWARE OF THE EXISTENCE OF THE BUILDING WHERE THE FIVE EMPLOYEES CONCERNED WERE EMPLOYED AND ACCORDINGLY WAS NOT IN A POSITION TO REQUEST THAT A FORM 48

AND A COPY OF THE VOTERS LIST BE POSTED ON THAT LOCATION. THE APPLICANT ARGUES THAT THE RESPONDENT, ON THE OTHER HAND, WAS FULLY APPRAISED OF THE SITUATION AND OF THE FACT THAT THERE WAS A NOTICE BOARD IN THE BASEMENT OF THE BUILDING. NEVERTHELESS THE RESPONDENT DID NOT SO INFORM THE APPLICANT NOR DID IT ATTEMPT TO NOTIFY THE FIVE EMPLOYEES OF THE POLLING ARRANGEMENTS PRIOR TO THE TAKING OF THE VOTE. MOREOVER, ON THE DATE OF THE VOTE, THE SUPERVISOR OF THE DEPARTMENT DID NOT INFORM THE EMPLOYEES THAT THE VOTE WAS IN PROGRESS. AS WELL, IN CLASSIFYING THE FIVE EMPLOYEES AS HEADQUARTERS ENGINEERING SERVICES, INSTEAD OF CENTRAL REPRODUCTION DEPARTMENT, THE RESPONDENT MISLED THE RETURNING OFFICER AND THE SCRUTINEERS AS TO THEIR LOCATION, WHICH IN TURN WAS A CONTRIBUTING FACTOR IN THEIR FAILURE TO HAVE AN OPPORTUNITY TO VOTE. THE APPLICANT SUBMITS THAT IN ITS TOTALITY THE EVIDENCE REVEALS THAT THE RESPONDENT FAILED TO FULFIL ITS RESPONSIBILITIES AND THEREBY DEPRIVED THE FIVE EMPLOYEES OF THEIR RIGHT TO CAST A BALLOT IN THE VOTE.

19. FURTHER, THE APPLICANT URGED THE BOARD TO ACCEPT THE EVIDENCE OF HELEN MCCOOL THAT SHE DREW TO THE ATTENTION OF THE RETURNING OFFICER ON THREE OCCASIONS THE FACT THAT NONE OF THE FIVE EMPLOYEES CLASSIFIED AS HEADQUARTERS ENGINEERING SERVICES HAD CAST A BALLOT. HAVING BEEN PUT ON NOTICE, THE APPLICANT ARGUES THAT THERE WAS AN OBLIGATION ON THE RETURNING OFFICER TO PURSUE HIS INQUIRIES FURTHER THAN WAS DONE IN THE INSTANT CASE, SO AS TO BE SATISFIED THAT THE FIVE EMPLOYEES KNEW THAT THEY WERE ELIGIBLE TO VOTE AND THAT THE POLL WAS OPEN FOR THEM TO CAST THEIR BALLOTS.

20. IN LIGHT OF ALL THE ABOVE CIRCUMSTANCES THE APPLICANT SUBMITS THAT THE NAMES OF THE FIVE EMPLOYEES CONCERNED SHOULD BE STRUCK OFF THE RECORD VOTERS' LIST, OR ALTERNATIVELY, THE FIVE EMPLOYEES SHOULD BE PERMITTED TO CAST BALLOTS TO BE COUNTED IN THE VOTE TAKEN ON JUNE 23RD.

21. THE RESPONDENT SUBMITS THAT IT COMPLIED NOT ONLY WITH THE REGISTRAR'S INSTRUCTIONS REGARDING THE VOTE BUT ALSO COMPLIED WITH EVERY REQUEST OF THE APPLICANT IN MAKING ARRANGEMENTS FOR THE TAKING OF THE VOTE. MOREOVER, THERE IS NO EVIDENCE OF ANY IRREGULARITIES IN THE CONDUCT OF THE VOTE. WITH REGARD TO POLL 9, THE RESPONDENT NOTED THAT HELEN MCCOOL, THE SCRUTINEER OF THE RESPONDENT, EXECUTED THE "CERTIFICATION OF CONDUCT OF ELECTIONS" ON BEHALF OF THE APPLICANT. THIS DOCUMENT CERTIFIES IN PART "THAT THE BALLOTING WAS FAIRLY CONDUCTED AND THAT ALL ELIGIBLE VOTERS WERE GIVEN AN OPPORTUNITY TO CAST THEIR BALLOTS IN SECRET". THE RESPONDENT ASSERTS THAT IT WAS ONLY AFTER THE RESULT OF THE VOTE BECAME KNOWN AND IT WAS APPARENT THAT THE REMOVAL OF POSSIBLY ONLY ONE NAME FROM THE REVISED VOTERS' LIST WOULD ENTITLE THE APPLICANT TO CERTIFICATION, THAT THE APPLICANT ALLEGED THAT FIVE ELIGIBLE VOTERS HAD BEEN DISFRANCHISED.

22. THE RESPONDENT STRESSES THAT NOT ONLY WERE 26 FORM 48'S TOGETHER WITH ACCOMPANYING VOTERS' LISTS PROMINANTLY DISPLAYED THROUGHOUT PLANT NO. 2 FOR A WEEK PRIOR TO THE TAKING OF THE VOTE, BUT AS WELL, THE APPLICANT GAVE WIDE DISTRIBUTION TO A NUMBER OF BULLETINS WHICH IT ISSUED, CONTAINING INSTRUCTIONS TO EMPLOYEES CONCERNING THE TAKING OF THE VOTE. THE RESPONDENT ARGUES THAT DESPITE THE EVIDENCE OF MAY BRUCE, IT IS INCOMPREHENSIBLE THAT ANY EMPLOYEES WHO HAD ANY INTEREST WHATSOEVER IN PARTICIPATING IN THE VOTE COULD NOT BE AWARE OF THE RELEVANT VOTE ARRANGEMENTS IN THE FACT OF THE WIDESPREAD PUBLICITY CONCERNING THE VOTE AND MANY NOTICES THAT WERE POSTED. THE RESPONDENT ALSO SUGGESTS THAT SINCE THE APPLICANT REQUESTED THAT THE NAME OF ONE OF THE FIVE EMPLOYEES, L. MAJENSKY,

BE ADDED TO THE VOTERS' LIST, IT CANNOT CLAIM TO BE TOTALLY WITHOUT KNOWLEDGE CONCERNING THESE EMPLOYEES. THE RESPONDENT ARGUES THAT THERE IS NO EVIDENCE TO SUPPORT A FINDING THAT THE REMAINING EMPLOYEES CONCERNED WERE UNAWARE OF THEIR VOTING RIGHTS. IT WAS POINTED OUT, MOREOVER, THAT THERE WERE AN ADDITIONAL 36 ELIGIBLE EMPLOYEES WHO DID NOT CAST BALLOTS, WITH RESPECT TO WHOM THERE IS NO EVIDENCE. THE RESPONDENT ARGUES THAT IF THE BOARD WERE PREPARED TO REMOVE THE 5 ELIGIBLE VOTERS WHO DID NOT CAST BALLOTS, IT WOULD HAVE NO LESS REASON TO REMOVE THE OTHER 36 NAMES OF ELIGIBLE VOTERS WHO DID NOT CAST BALLOTS. THE RESPONDENT SUBMITS THAT NO BASIS HAS BEEN ESTABLISHED TO STRIKE OFF ANY OF THESE NAMES AND TO DO SO WOULD CLEARLY BE IN CONTRAVENTION OF SECTION 7(4) OF THE LABOUR RELATIONS ACT.

23. THE RESPONDENT DREW PARTICULAR ATTENTION TO THE CONFLICT IN THE EVIDENCE OF HELEN MCCOOL AND CALDWELL WITH REGARD TO HIS ALLEGED ANSWER TO KAY AS TO THE WORKING AREA OF THE FIVE EMPLOYEES. THE RESPONDENT SUBMITS THAT CALDWELL HAD NO REASON WHATSOEVER TO MISREPRESENT THE TRUE LOCATION OF THESE EMPLOYEES AND THAT ACCORDINGLY HIS EVIDENCE SHOULD BE ACCEPTED OVER THAT OF MCCOOL. THE RESPONDENT ARGUES ALSO THAT THE EVIDENCE OF HELEN HOATH, WHICH CORROBORATES THE EVIDENCE OF CALDWELL SHOULD BE PREFERRED OVER THAT OF MCCOOL. IN ANY EVENT, THE RESPONDENT SUBMITS THAT THE CONDUCT OF THE RETURNING OFFICER IN ALL RESPECTS WAS CORRECT AND IN ACCORDANCE WITH USUAL PROCEDURE.

24. THE BOARD HAS CAREFULLY CONSIDERED ALL OF THE EVIDENCE AND THE SUBMISSIONS OF THE APPLICANT AND THE RESPONDENT. IN ALL ESSENTIAL RESPECTS WE ACCEPT THE ARGUMENT OF THE RESPONDENT. WE NOTE THAT A GREAT NUMBER OF NOTICES OF TAKING OF VOTE WERE POSTED WHICH ARE DISTINCTIVE BY THEIR SIZE ALONE. IN ADDITION, THE EXTRAORDINARY PROCEDURE WAS FOLLOWED OF POSTING WITH EACH FORM 48 A LIST OF THE ELIGIBLE VOTERS ACCORDING TO THEIR POLLING STATION. AS WELL, THE APPLICANT ISSUED A SERIES OF BULLETINS CONCERNING THE VOTE WHICH WERE WIDELY DISTRIBUTED AMONG THE EMPLOYEES. WHILE IN RETROSPECT IT MAY HAVE BEEN DESIRABLE TO HAVE HAD A FORM 48 AND A VOTERS' LIST POSTED IN THE HEADQUARTERS ENGINEERING SERVICES BUILDING, WE ARE SATISFIED THAT BOTH PARTIES MADE EVERY REASONABLE EFFORT IN ADVANCE OF THE TAKING OF THE VOTE TO INFORM ALL OF THE EMPLOYEES AS TO THEIR ELIGIBILITY TO VOTE AND THE TIME AND PLACE WHERE THEY WERE TO CAST THEIR BALLOTS. IN LIGHT OF THE ELABORATE ARRANGEMENTS FOR THE TAKING OF THE VOTE, WE CAN ONLY CONCLUDE THAT ELIGIBLE EMPLOYEES, WHO BY JUNE 23RD WERE NOT FULLY APPRAISED OF THE INFORMATION REGARDING THE VOTE WHICH WAS RELEVANT TO THEM, WERE NOT INTERESTED IN PARTICIPATING IN THE VOTE. ALTERNATIVELY, IF ANY ELIGIBLE EMPLOYEES WHO DID NOT CAST BALLOTS WERE IN FACT INTERESTED IN DOING SO, IN OUR OPINION, THEY MUST ASSUME INDIVIDUAL RESPONSIBILITY FOR THEIR FAILURE TO PROPERLY INFORM THEMSELVES OF THE ARRANGEMENTS FOR THE VOTE.

25. WE WOULD ALSO COMMENT ON THE EVIDENCE RELATING TO THE CONDUCT OF THE VOTE ITSELF. EVEN IF WE WERE TO ACCEPT THE TESTIMONY OF HELEN MCCOOL, HAVING REGARD TO THE SIZE AND COMPLEXITY OF THE VOTE, THE CAREFUL PRIOR ARRANGEMENTS THAT HAD BEEN MADE, AND THE SMALL NUMBER OF ELIGIBLE VOTERS WHO FAILED TO CAST BALLOTS AT POLL 9, WE FIND THAT THE RETURNING OFFICER AT POLL 9 FULLY DISCHARGED HIS RESPONSIBILITIES IN ACCORDANCE WITH THE ARRANGEMENTS FOR THE CONDUCT OF THE VOTE.

26. IN ALL THE CIRCUMSTANCES WE ARE SATISFIED THAT EVERY ELIGIBLE EMPLOYEE WAS GIVEN A FULL OPPORTUNITY TO CAST A BALLOT IN THE REPRESENTATION VOTE

ON JUNE 23RD. ACCORDINGLY, WE ARE NOT PREPARED EITHER TO STRIKE THE NAMES OF THE FIVE EMPLOYEES CONCERNED FROM THE REVISED VOTERS' LIST OR TO GIVE THEM A FURTHER OPPORTUNITY TO CAST BALLOTS TO BE COUNTED IN THE VOTE THAT HAS BEEN TAKEN.

27. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD NOT MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE APPLICANT.

28. THE APPLICATION IS THEREFORE DISMISSED.

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10775-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. FALCONBRIDGE NICKEL MINES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., D. M. STOREY, B. ORMSBY, R. KIDDE A. WINSA AND R. THOMSON FOR THE APPLICANT, N. MACL. ROGERS, Q.C., J. C. CARSON AND E. R. MATHER FOR THE RESPONDENT.

DECISION OF J.D. O'SHEA, VICE-CHAIRMAN FOR THE MAJORITY, AND DISSENTING DECISION OF BOARD MEMBERS E. BOYER AND H. F. IRWIN: (SEPTEMBER 14, 1966).

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT APPLIED TO BE CERTIFIED FOR A BARGAINING UNIT CONSISTING OF ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. PURSUANT TO HIS APPOINTMENT DATED SEPTEMBER 15TH, 1965, THE BOARD'S EXAMINER MET WITH THE PARTIES ON NUMEROUS OCCASIONS OVER A PERIOD OF EIGHT MONTHS. AT THESE MEETINGS IN EXCESS OF 150 PERSONS WERE DEALT WITH. WHILE THE PARTIES WERE FINALLY ABLE TO REACH AGREEMENT WITH RESPECT TO A NUMBER OF THE DISPUTED PERSONS THE EXAMINER PREPARED A REPORT DATED JUNE 8TH, 1966 ON THE PERSONS REMAINING IN DISPUTE.

4. THE EXAMINER PREPARED A SUPPLEMENTARY REPORT DATED JUNE 24TH, 1966 IN ANSWER TO OBJECTIONS RAISED BY THE PARTIES.

5. BOTH PARTIES REQUESTED AN OPPORTUNITY TO MAKE REPRESENTATIONS WITH RESPECT TO THE REPORT OF THE EXAMINER AND THE BOARD CONDUCTED HEARINGS ON JULY 18TH TO JULY 22ND, 1966, INCLUSIVE, FOR THAT PURPOSE. THE PARTIES AGREED AT THE HEARING THAT THE EXAMINER'S REPORT DATED JUNE 8TH, 1966 CONTAINING IN EXCESS OF 230 PAGES, AS AMENDED BY THE SUPPLEMENTARY REPORT OF THE EXAMINER DATED JUNE 24TH, 1966, CORRECTLY SET FORTH ALL THE EVIDENCE OF THE DUTIES AND RESPONSIBILITIES OF THE PERSONS IN DISPUTE.

6. DURING THE FIVE DAYS OF ARGUMENT BY THE PARTIES ON WHAT CONCLUSION THE BOARD SHOULD COME TO IN VIEW OF THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORTS, THE APPLICANT ARGUED THAT ALL THE DISPUTED EMPLOYEES AND CLASSIFICATIONS REFERRED

TO THEREIN WERE ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT CLAIMED BY IT TO BE APPROPRIATE. THE RESPONDENT OPPOSED THE INCLUSION OF SUCH PERSONS EITHER BECAUSE OF MANAGERIAL FUNCTIONS WHICH THE RESPONDENT ALLEGED WERE EXERCISED BY THE PERSONS IN DISPUTE OR BECAUSE IT ALLEGED THAT SUCH PERSONS WERE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. IN THE ALTERNATIVE, THE RESPONDENT ARGUED THAT IF THE BOARD DETERMINED THAT SOME OF THE DISPUTED PERSONS WERE ELIGIBLE FOR INCLUSION IN A BARGAINING UNIT, A SEPARATE BARGAINING UNIT SHOULD BE ESTABLISHED FOR SUCH PERSONS BECAUSE THEY HAVE NO COMMUNITY OF INTEREST WITH THE OTHER OFFICE, CLERICAL AND TECHNICAL EMPLOYEES WHOM THE RESPONDENT AGREED WERE ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT.

7. COUNSEL FOR THE PARTIES ABLY ARGUED THEIR RESPECTIVE POSITIONS AND REFERRED THE BOARD TO A GREAT NUMBER OF CASES IN SUPPORT THEREOF. IT WAS READILY APPARENT THAT EACH PARTY LOOKED AT THE EVIDENCE AND AUTHORITIES FROM DIAMETRICAL OPPOSITE POINTS OF VIEW BECAUSE IN MANY INSTANCES COUNSEL FOR EACH PARTY EMPHASIZED THE SAME PORTIONS OF EVIDENCE AND RELIED ON THE SAME CASES AS AUTHORITY SUPPORTING THEIR OPPOSING POINTS OF VIEW. THIS IS NOT INTENDED AS CRITICISM OF COUNSEL BUT IT DOES EMPHASIZE THE DIFFICULTY WITH WHICH THE BOARD IS FACED. DRAWING THE LINE BETWEEN MANAGERIAL PERSONS AND EMPLOYEES ELIGIBLE FOR INCLUSION IN A BARGAINING UNIT IN A LARGE SOPHISTICATED CORPORATE COMPLEX IS A VERY DIFFICULT TASK.

8. SOME OF THE CASES TO WHICH THE BOARD WAS REFERRED WHEREIN CERTAIN PERSONS AND CLASSIFICATIONS WERE EITHER INCLUDED OR EXCLUDED FROM A BARGAINING UNIT CAN BE OF NO REAL ASSISTANCE TO THE BOARD IN REACHING ITS DECISION IN THIS MATTER SINCE THE RESULT IN SUCH CASES WAS DETERMINED BY THE AGREEMENT OF THE PARTIES.

9. ONE OF THE EARLIEST CASES DEALING WITH THE PROBLEM WITH WHICH THE BOARD IS FACED TO WHICH THE RESPONDENT REFERRED IS LOCAL 2890, UNITED STEEL WORKERS OF AMERICA V. The R. McDougall Company Limited 1943 O.W.N. 743. THIS CASE AROSE UNDER THE COLLECTIVE BARGAINING ACT, 1943 (ONT.), c. 4 WHICH WAS ONE OF THE PREDECESSORS OF THE PRESENT LABOUR RELATIONS ACT. THE CASE WAS CONCERNED WITH THE MEANING OF THE TERM "SUPERVISORY" WHICH WAS A CLASSIFICATION EXCLUDED FROM THE DEFINITION OF "EMPLOYEE". THE RELEVANT CLAUSE OF THE ACT READ AS FOLLOWS: "A PERSON ACTING ON BEHALF OF THE EMPLOYER IN A SUPERVISORY OR CONFIDENTIAL CAPACITY, OR HAVING AUTHORITY TO EMPLOY, DISCHARGE OR DISCIPLINE EMPLOYEES". WHILE THAT CASE MAY BE CAPABLE OF DISTINCTION ON THE GROUNDS THAT SECTION 1(3)(b) OF THE LABOUR RELATIONS ACT IS IN DIFFERENT TERMS FROM THE CLAUSE ABOVE REFERRED TO, CERTAIN STATEMENTS CONTAINED THEREIN ARE WORTHY OF NOTE. AT PAGE 744 THE REGISTRAR STATES: "SINCE THERE IS NO UNIFORMITY IN THE NOMENCLATURE OF OCCUPATIONAL CLASSIFICATIONS TO BE FOUND IN VARIOUS INDUSTRIES OR EVEN IN DIFFERENT PLANTS IN THE SAME INDUSTRY, LITTLE ASSISTANCE CAN BE DERIVED FROM THE TITLE CONFERRED UPON A PARTICULAR EMPLOYEE IN A PARTICULAR PLANT." "...PERSONS RESPONSIBLE FOR THE QUANTITY AND QUALITY OF WORK OF EMPLOYEES UNDER THEM SHOULD BE REGARDED AS ACTING IN A SUPERVISING CAPACITY EVEN THOUGH SUCH PERSONS MAY THEMSELVES ENGAGE TO SOME EXTENT IN MANUAL WORK DURING THE PERIODS NOT DEVOTED TO SUPERVISION." "...BUT THE MERE FACT THAT A PERSON IS CHARGED WITH THE DUTY OF APPORTIONING WORK AMONG HIS FELLOW EMPLOYEES IS NOT SUFFICIENT, WITHOUT MORE, TO PUT HIM IN THE CATEGORY OF A SUPERVISORY EMPLOYEE. ..."

10. THE BOARD WAS ALSO REFERRED TO CORPORATION OF THE CITY OF EASTVIEW CASE, O.L.R.B. MONTHLY REPORT, MARCH 1965, P. 639 BY BOTH PARTIES. IN THAT CASE THE BOARD WAS CALLED UPON TO DETERMINE WHETHER OR NOT THREE PERSONS CLASSIFIED AS FOREMEN EXERCISED MANAGERIAL FUNCTIONS. IN SETTING OUT SOME OF THE INDICIA OF MANAGEMENT THE BOARD IN THAT CASE SAID:

THESE THREE FOREMEN ARE PRIMARILY ENGAGED TO SUPERVISE THE MEN ON THE JOB AND WHILE THEY MAY OCCASIONALLY "GIVE A MAN A HAND" THEY NORMALLY DO NOT WORK. IN THE SUPERVISION OF THE MEN THE FOREMEN ASSIGN WORK TO THE MEN, INSTRUCT THE MEN IN THEIR WORK, REPORT ON THE PROGRESS OF THE MEN, KEEP TIME RECORDS AND DISTRIBUTE THE MEN'S TIME CHARGES TO THE PROPER ACCOUNTS AND THEY "MAY RECOMMEND" PROMOTIONS. WHILE THESE FOREMEN ARE THE FIRST STEP IN THE GRIEVANCE PROCEDURE DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 20, CANADIAN UNION OF PUBLIC EMPLOYEES COVERING THE RESPONDENT'S OUTSIDE EMPLOYEES, IT APPEARS HOWEVER, THAT THE PARTIES TO THE COLLECTIVE AGREEMENT IN PRACTICE BY-PASS THE FOREMEN AND COMMENCE A GRIEVANCE PROCEDURE AT THE SUPERINTENDENT OF PUBLIC WORKS STAGE. THE MEN WORKING UNDER THE FOREMEN ARE HOURLY RATED WHEREAS THE FOREMEN ARE PAID A STRAIGHT SALARY, WHICH IS 20% TO 25% MORE THAN THAT EARNED BY THE MEN WORKING UNDER THEM.

WHILE IT IS ACKNOWLEDGED THAT CERTAIN MANAGEMENT FUNCTIONS SUCH AS HIRING AND FIRING ARE NOT EXERCISED BY THE FOREMEN, THIS IN NO WAY DETRACTS FROM THE MANAGEMENT FUNCTIONS WHICH ARE IN FACT EXERCISED BY THEM. THE FOREMEN ARE ENGAGED PRIMARILY TO EXERCISE MANAGEMENT FUNCTIONS AND FUNCTIONS PERFORMED BY THEM WHICH ARE NOT MANAGEMENT FUNCTIONS ARE ONLY INCIDENTAL TO THEIR PRIMARY DUTIES.

11. BOTH PARTIES ALSO REFERRED THE BOARD TO ROTHMANS OF PALL MALL CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER 1964, P. 381 WHEREIN THE BOARD WAS CALLED UPON TO DETERMINE WHETHER PATRICK RICHARDSON EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B). IN THAT CASE THE BOARD STATED:

IT IS PLAIN THAT PATRICK RICHARDSON PERFORMS DUTIES OF A GREATER RESPONSIBILITY THAN THE TWO EMPLOYEES WHO WORK WITH HIM IN THE STORES PORTION OF THE MAINTENANCE DEPARTMENT. WE ARE NOT PERSUADED, HOWEVER, ON OUR ANALYSIS OF THE EVIDENCE, THAT HE EXERCISES OR POSSESSES ANY APPRECIABLE DEGREE OF SUPERVISORY AUTHORITY OR THAT IN PERFORMING HIS DUTIES HE IS REQUIRED TO OR THAT HE DOES INITIATE, OR EFFECTUATE ANY INDEPENDENT DECISIONS OR POLICIES AFFECTING THE DEPARTMENT OR THE STORES PORTION THEREOF, OR

THAT HE GIVES DIRECTION OR ALLOTS WORK TO THE TWO OTHER EMPLOYEES, SAVE ONLY IN VERY ROUTINE AND CLOSELY CONTROLLED AREAS PREDETERMINED AND FORMULATED BY MANAGEMENT. MOREOVER, ON THE BASIS OF OUR INTERPRETATION OF THE EVIDENCE, AND PARTICULARLY THAT OF PATRICK RICHARDSON HIMSELF, WE ARE AT A LOSS TO FIND, AS WE WERE INVITED TO DO, THAT HIS STATUS WITH THE COMPANY IS ON THE SAME LEVEL OF RESPONSIBILITY IN HIS AREA OR IS EQUAL TO THAT OF R. WALMSLEY, THE PURCHASING AGENT, OR G. MURPHY, THE MAINTENANCE SUPERINTENDENT, WHO ARE ADMITTEDLY ENGAGED IN MANAGERIAL WORK.

NO DOUBT, OF COURSE, HIS EMPLOYMENT RELATIONSHIP WITH THE COMPANY DOES ENCOMPASS CERTAIN ELEMENTS (E.G. HE DOES EXERCISE SOME DIRECTION OVER AND ALLOTS CERTAIN WORK TO THE OTHER TWO EMPLOYEES; HE HAS A GREATER RESPONSIBILITY THAN THESE TWO EMPLOYEES; HE HAS BEEN INVITED TO MAKE SUGGESTIONS TO MANAGEMENT CONCERNING THE ROUTINE OF THE DAY-TO-DAY OPERATION AND INVENTORY OF THE STORES PORTION OF THE MAINTENANCE DEPARTMENT; HE IS REQUIRED TO AND DOES EXERCISE SOME INDEPENDENT JUDGMENT ALBEIT IN VERY ROUTINE, CLOSELY CONTROLLED AND PREDETERMINED MATTERS; HE IS PAID A SALARY RATHER THAN BEING HOURLY RATED; HE DOES NOT SUSTAIN ANY DEDUCTIONS FROM HIS PAY FOR SHORT PERIODS OF ABSENCE DUE TO ILLNESS; AND HE DOES NOT PUNCH A TIME CLOCK) WHICH, AT LEAST WHEN THEY HAVE BEEN COMPLEMENTED WITH OTHER FACTORS, HAVE OFTEN BEEN CONSIDERED AS FORMING SOME PART OF THE INDICIA OF A MANAGEMENT FUNCTION, WE ARE NOT SATISFIED THAT THESE ELEMENTS STANDING ALONE, OR WHEN TAKEN WITH HIS DUTIES AND POSITION AS A WHOLE, ARE, IN THE CIRCUMSTANCES, OF SUFFICIENT PROPORTION, OR OF SUCH CHARACTER OR QUALITY AS TO PLACE PATRICK RICHARDSON IN THE CATEGORY OF A PERSON PERFORMING MANAGERIAL FUNCTIONS. THE FACT THAT MANAGEMENT TOOK SOME FORMAL STEPS TO "PROMOTE" RICHARDSON TO A "STAFF POSITION" AND THEREBY, APPARENTLY, TO CONFER UPON HIM A MANAGEMENT TITLE, CANNOT IN THE ABSENCE OF GIVING HIM THE FACTUAL ATTRIBUTES OF SUCH A POSITION, HAVE THE EFFECT OF ELEVATING HIM TO THE RANKS OF MANAGEMENT FOR PURPOSES OF THE LABOUR RELATIONS ACT. IN SUBSTANCE RICHARDSON'S DUTIES AND RESPONSIBILITIES AFTER HIS "PROMOTION" REMAINED MUCH THE SAME AS THEY HAD EXISTED BEFORE.

IN THE RESULT, IT IS OUR OPINION THAT PATRICK RICHARDSON DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

12. IN RICHARDSON, BOND & WRIGHT LTD. CASE, O.L.R.B. MONTHLY REPORT, MARCH 1965, P. 638, THE BOARD IN ASSESSING THE DUTIES AND RESPONSIBILITIES OF A PERSON CLASSIFIED AS A SUPERVISOR STATED AS FOLLOWS:

THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT INDICATES THAT MR. GEORGE HASTON, A PERSON CLASSIFIED BY THE RESPONDENT AS SUPERVISOR, IS IN CHARGE OF ALL THE THIRTY-FIVE EMPLOYEES ON THE THIRD FLOOR OF THE RESPONDENT'S PREMISES. HE SPENDS 100 PER CENT OF HIS TIME SUPERVISING THESE EMPLOYEES. NO OTHER MEMBER OF MANAGEMENT IS LOCATED ON THE 3RD FLOOR. MR. HASTON HAS AUTHORITY TO ARRANGE FOR OVERTIME, TO GRANT PERMISSION FOR EMPLOYEES TO LEAVE WORK EARLY, TO ALLOCATE THE WORK OF ALL THE EMPLOYEES AND TO DIRECT WHICH EMPLOYEES ARE TO DO THE WORK. HE ATTENDS MANAGEMENT MEETINGS AND ATTENDED THE MEETING OF MANAGEMENT WHICH WAS CALLED TO DISCUSS THIS APPLICATION FOR CERTIFICATION. HE INITIALS TIME CARDS WHEN THE EMPLOYEES HAVE FAILED TO PUNCH THEM, AND WHEN EMPLOYEES ARE ABSENT AND THEY SO INFORM THE OFFICE HE IS THE PERSON ADVISED BY THE OFFICE OF THE EMPLOYEES' ABSENCE. WHILE MR. HASTON DOES NOT HAVE THE POWER TO HIRE AND FIRE HE HAS IN FACT RECOMMENDED PERSONS FOR EMPLOYMENT. MR. HASTON IS LOOKED UPON BY THE EMPLOYEES AS HEAD OF HIS DEPARTMENT AS EVIDENCED BY THE FACT THAT A RECENT PUBLICATION PUBLISHED BY THE RESPONDENT COVERING ACTIVITIES OF THE EMPLOYEES CONTAINS A PICTURE OF ELEVEN EMPLOYEES WITH A CAPTION INDICATING THAT THEY ARE "THE LATEST ADDITIONS TO THE STAFF IN GEORGE HASTON'S DEPARTMENT". ANOTHER FACTOR WHICH WE HAVE CONSIDERED IS THE FACT THAT THE RESPONDENT'S ORGANIZATION MANUAL DATED FEBRUARY 1960 WHICH WAS IN USE ON THE DATE THIS APPLICATION WAS MADE, CONTAINS A JOB DESCRIPTION ENTITLED "ASSISTANT FOREMEN HAND OPERATIONS" WHICH DESCRIPTION MR. HASTON IDENTIFIED AS REFERRING TO HIS WORK. MR. HASTON POSSESSES A COPY OF THE ORGANIZATION MANUAL WITH HIS OWN NAME PRINTED THEREON IN GOLD. THE OTHER EMPLOYEES WORKING IN MR. HASTON'S DEPARTMENT DO NOT HAVE A COPY OF THIS MANUAL. THE MANAGEMENT CHART CONTAINED IN THE MANUAL INCLUDES THE POSITION WHICH DESCRIBES MR. HASTON'S JOB. WHILE IT IS TRUE THAT MR. HASTON HAS NEVER BEEN GIVEN THE TITLE ATTRIBUTED TO THE JOB SET OUT IN THE MANUAL, HE IS IN FACT DOING THE WORK WHICH IS DESCRIBED BY THE MANUAL FOR THIS JOB. IT IS OF INTEREST TO NOTE THAT THERE ARE THIRTY-TWO MANAGEMENT POSITIONS SET FORTH IN THE MANAGEMENT CHART AND THAT THE ASSISTANT GENERAL MANAGER IS RESPONSIBLE FOR PERSONNEL RELATIONS FOR THE 345 EMPLOYEES OF THE RESPONDENT. IN VIEW OF THE ABOVE FUNCTIONS OF MR. HASTON WE ARE IMPELLED TO FIND THAT ALL HIS DUTIES ARE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR

RELATIONS ACT AND THAT 100 PER CENT OF HIS TIME IS SPENT IN THE EXERCISE OF THESE FUNCTIONS. WHILE IT IS TRUE THAT THERE ARE OTHER MANAGERIAL FUNCTIONS SUCH AS HIRING AND FIRING EXERCISED BY OTHER PERSONS IN MANAGEMENT, THE FACT THAT THE OTHER MANAGERIAL FUNCTIONS ARE NOT EXERCISED BY MR. HASTON IN NO WAY DETRACTS FROM THE MANAGERIAL FUNCTIONS WHICH HE DOES EXERCISE AND WE ARE THEREFORE IMPELLED TO FIND THAT HE IS NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

13. THE BOARD WAS CALLED UPON IN BURNS & CO. LIMITED CASE, O.L.R.B. MONTHLY REPORT, APRIL 1965, P. 1 TO DETERMINE WHETHER OR NOT A SENIOR ACCOUNTANT OR CHIEF ACCOUNTANT EXERCISED MANAGERIAL FUNCTIONS AND IN THAT CASE THE BOARD SET OUT SOME OF THE FUNCTIONS WHICH THE BOARD DEEMED TO BE MANAGERIAL AS FOLLOWS:

IN ARRIVING AT THIS DECISION WE HAVE TAKEN INTO CONSIDERATION THE EVIDENCE THAT AT THE TIME OF MR. DAVID W. HELDMAN'S PROMOTION TO THIS POSITION, AN OFFICIAL NOTICE OF HIS APPOINTMENT WAS PREPARED WHEREIN HIS PERSONAL HISTORY WAS SET FORTH AND THIS NOTICE APPEARED ON THE BULLETIN BOARDS AND WAS ALSO SENT TO DEPARTMENT HEADS. IN ADDITION, MR. DAVID W. HELDMAN IS RESPONSIBLE FOR THE PREPARATION OF THE FINANCIAL STATEMENTS AND THE BUDGETS FOR THE RESPONDENT, IS ONE OF THE CO-SIGNERS OF CHEQUES IN AMOUNTS OF EXCESS OF \$400.00 WHERE TWO SIGNATURES ARE REQUIRED AND ALSO HAS AUTHORITY TO ISSUE CHEQUES ON HIS OWN SIGNATURE FOR AMOUNTS UNDER \$400.00. AS CHIEF ACCOUNTANT HE HAS AUTHORITY TO ISSUE THE SALARY CHEQUES ON HIS OWN SIGNATURE AND IN FACT HAS DONE SO. MR. DAVID W. HELDMAN IS NOT ENTITLED TO OVER-TIME PAY AS ARE THE EMPLOYEES IN THE BARGAINING UNIT, INCLUDING THE JUNIOR ACCOUNTANT WHO WORKS UNDER HIS DIRECTION, AND HE IS NOT ENTITLED TO SHARE IN THE "BONUS PLAN" WHICH IS AVAILABLE TO EMPLOYEES IN THE BARGAINING UNIT. HE ALSO ACTS AS AN INTERMEDIARY BETWEEN DEPARTMENT HEADS WITH RESPECT TO THE TRANSFER OF STAFF BETWEEN DEPARTMENTS. THE WITNESS ALSO REGULARLY ATTENDS MANAGEMENT MEETINGS WHICH ARE ATTENDED BY ALL MEMBERS OF MANAGEMENT INCLUDING THE PERSONNEL MANAGER.

WHILE IT IS ACKNOWLEDGED THAT THERE ARE CERTAIN OTHER MANAGERIAL FUNCTIONS SUCH AS HIRING AND FIRING WHICH ARE EXERCISED BY OTHER MEMBERS OF MANAGEMENT THIS FACT IN NO WAY DETRACTS FROM THE MANAGERIAL FUNCTIONS WHICH ARE REGULARLY EXERCISED BY MR. DAVID W. HELDMAN.

14. BARBARA JARVIS AND ASSOCIATED MEDICAL SERVICES INCORPORATED CASE, CANADIAN LABOUR LAW CASES, VOL. 2, 1960-1964, ¶16, 218 AGAIN SETS OUT CERTAIN INDICIA OF MANAGEMENT AS FOLLOWS:

THE EVIDENCE PRESENTED AT THE HEARING IN THE INSTANT CASE ESTABLISHES THAT ON FEBRUARY 29, 1960, THE COMPLAINANT WAS PROMOTED TO THE POSITION OF RAILWAY CLAIMS SUPERVISOR AND THAT SUBSEQUENT TO THAT DATE SHE EXERCISED DISCIPLINARY AUTHORITY OVER EMPLOYEES OF THE RESPONDENT IN THE RAILWAY CLAIMS, CLERICAL AND ASSESSING SECTION, "HIRED AND FIRED" EMPLOYEES IN THAT SECTION AND MADE RECOMMENDATIONS FOR SALARY INCREASES FOR EMPLOYEES UNDER HER SUPERVISION. SHE MADE OUT AND SUBMITTED TO THE SENIOR EXECUTIVES OF THE RESPONDENT A MONTHLY EVALUATION FORM ON EACH EMPLOYEE UNDER HER SUPERVISION AND MADE RECOMMENDATIONS ON "INTERNAL REALIGNMENTS AND REORGANIZATION OF THE DEPARTMENT". ALTHOUGH FOR A TIME AFTER HER APPOINTMENT AS SUPERVISOR SHE CONTINUED TO DO SOME ROUTINE CLERICAL WORK, NEVERTHELESS FOR THREE OR FOUR MONTHS PRIOR TO HER DISCHARGE SHE DEVOTED ALMOST 100 PER CENT OF HER TIME TO SUPERVISION. IN THIS RESPECT, THERE WERE TIMES WHEN SHE ACTED ON INSTRUCTIONS FROM HER SUPERIORS AND TIMES WHEN SHE ACTED ON HER OWN INITIATIVE. THERE CAN BE NO QUESTION BUT THAT ON AND AFTER FEBRUARY 29, 1960, MRS. JARVIS EXERCISED FUNCTIONS WHICH VIEWED IN THEIR ENTIRETY WERE FUNCTIONS WHICH THE BOARD HAS UNIFORMLY CHARACTERIZED AS MANAGERIAL IN NATURE.

15. THE RESPONDENT IN ITS ARGUMENT RELIED ON THE STATEMENTS OF WELLS, J. AS REPORTED IN RE CANADIAN GENERAL ELECTRIC COMPANY LIMITED AND THE ONTARIO LABOUR RELATIONS BOARD 1956 O.R. 437, (1956) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, ¶15,071 WHICH QUASHED THAT PART OF THE DECISION OF THE BOARD WHEREIN THE BOARD FOUND THAT METHODS MEN, RATE SETTERS AND MOTION TIME STUDY MEN WERE INCLUDED IN THE BARGAINING UNIT. IT IS TO BE NOTED, HOWEVER, THAT THE COURT OF APPEAL REVERSED THE DECISION OF WELLS, J. ON THE GROUND THAT THE COURT HAD NO JURISDICTION TO UPSET THE DECISION OF THE BOARD. (SEE BRADLEY ET. AL. AND CANADIAN GENERAL ELECTRIC COMPANY LIMITED AND ONTARIO LABOUR RELATIONS BOARD (1957) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, ¶15,118).

16. THE RESPONDENT FURTHER RELIED ON LAKESHORE WORKMEN'S COUNCIL V. LAKE SHORE MINES LIMITED 1944 O.W.N. 85 WHEREIN THE LABOUR COURT FOUND THAT CERTAIN CLASSIFICATIONS SIMILAR TO SOME OF THOSE WITH WHICH WE ARE CONCERNED IN THE INSTANT CASE WERE PROPERLY INCLUDED IN THE PRODUCTION UNIT OF THAT MINE AND THAT A "BONUS" MAN WAS "ENDOWED WITH A DISCRETION IN CONNECTION WITH THE CALCULATION OF WAGE RATES, AND ACCORDINGLY HE IS INELIGIBLE AS A PERSON ACTING ON BEHALF OF THE EMPLOYER IN A CONFIDENTIAL CAPACITY".

17. THE RESPONDENT IN SUPPORT OF ITS ARGUMENT FOR A SEPARATE BARGAINING UNIT ALSO RELIED UPON WAKEFIELD LIGHTING LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1965, P. 143, WHICH READS IN PART AS FOLLOWS:

IT IS A WELL ESTABLISHED PRACTICE OF THE BOARD IN DETERMINING THE APPROPRIATENESS OF BARGAINING UNITS OF PERSONS ENGAGED IN PRO-

DUCTION AS DISTINGUISHED FROM THE OFFICE BARGAINING UNITS, TO INCLUDE IN THE PRODUCTION UNITS EMPLOYEES IN JOB CLASSIFICATIONS SUCH AS PRODUCTION SCHEDULERS, EXPEDITERS AND MATERIAL CONTROL CLERKS. THESE CLASSIFICATIONS MAY BE INCLUDED IN THE GENERAL DESCRIPTION OF "PLANT CLERICAL STAFF".

IT IS THE BOARD'S PRACTICE TO INCLUDE PLANT CLERICAL STAFF WITH THE PRODUCTION UNIT BECAUSE OF SUCH FACTORS AS COMMON SUPERVISION, THE FACT THAT THEY DIRECTLY SERVICE THE PRODUCTION UNIT, THEY ARE COMMONLY ASSOCIATED WITH THE PRODUCTION UNIT AND IN GENERAL THEIR COMMUNITY OF INTEREST IS WITH THAT UNIT. THIS FUNCTIONAL COHERENCE AND INTERDEPENDENCE IS THE REASON FOR INCLUDING SUCH CLASSIFICATIONS IN THE UNIT DETERMINED BY THE BOARD TO BE APPROPRIATE IN THIS MATTER.

18. IN LAKE ONTARIO PORTLAND CEMENT COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, JULY 1960, P. 158, THE BOARD DETERMINED THAT A PERSON CLASSIFIED AS AN ANALYST IN THE RESPONDENT COMPANY'S LABORATORY WAS NOT ELIGIBLE FOR INCLUSION IN A UNIT OF OFFICE AND CLERICAL EMPLOYEES OF THE COMPANY ON THE GROUNDS THAT "HE HAS LITTLE OR NO COMMUNITY OF INTEREST WITH THE OFFICE AND CLERICAL GROUP. HIS WORK AND INTERESTS ARE ALMOST WHOLLY WITH THE LABORATORY GROUP". IN THAT CASE THE REST OF THE LABORATORY EMPLOYEES WERE INCLUDED IN THE COMPANY'S PRODUCTION UNIT WHICH HAD BEEN PREVIOUSLY CERTIFIED.

19. THE PARTIES AGREED THAT NONE OF THE PERSONS IN DISPUTE WERE INCLUDED IN THE BARGAINING UNIT COVERING THE PRODUCTION EMPLOYEES OF THE RESPONDENT WHO ARE REPRESENTED BY ANOTHER TRADE UNION.

20. THE CASES CITED BY THE PARTIES IN SUPPORT OF THEIR RESPECTIVE POSITIONS ARE IMPORTANT GUIDE POSTS WHICH HAVE ASSISTED THE BOARD IN DETERMINING NOT ONLY THE INDICIA OF MANAGEMENT BUT ALSO WHAT EMPHASIS SHOULD ATTACH TO SUCH INDICIA.

21. THE APPLICANT APPLIED FOR AN INDUSTRIAL TYPE BARGAINING UNIT, I.E., "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES". THE RESPONDENT SUGGESTED THAT THE APPROPRIATE BARGAINING UNIT BE DESCRIBED AS "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES".

22. WHILE THE RESPONDENT ARGUED THAT SOME OF THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED, IF INCLUDED IN THE BARGAINING UNIT, SHOULD BE IN A BARGAINING UNIT SEPARATE FROM THE OFFICE AND CLERICAL EMPLOYEES BECAUSE THEY HAVE A SEPARATE AND DISTINCT COMMUNITY OF INTEREST, HOWEVER, THE RESPONDENT CALLED NO EVIDENCE TO ESTABLISH THIS ALLEGATION AND DID NOT DEVELOP THIS ARGUMENT TO ANY MEANINGFUL DEGREE. THE RESPONDENT DID NOT DEMONSTRATE HOW THE CLASSIFICATIONS IN QUESTION, SUCH AS GEOLOGISTS, DIFFERED IN INTEREST FROM OFFICE AND CLERICAL EMPLOYEES (EVEN IF WE WERE TO ASSUME THAT THEIR FUNCTIONS DIFFERED). THE RESPONDENT ALSO FAILED TO DEFINE THE SPECIFIC CLASSIFICATIONS WHICH SHOULD BE SEPARATED FROM THE OFFICE AND CLERICAL UNIT OR WHERE THE LINE SHOULD BE DRAWN BETWEEN THE TWO SUGGESTED BARGAINING UNITS.

25. WHILE THE BOARD IS OF OPINION THAT THERE MAY BE CASES (AND PERHAPS IF MORE INFORMATION AND ARGUMENT WAS BEFORE US IN THIS MATTER, THIS MAY BE SUCH A CASE) WHERE TECHNOLOGISTS AND TECHNICIANS, BECAUSE OF THE SPECIALIZED SKILLS GIVING RISE TO A SEPARATE COMMUNITY OF INTEREST, ARE DISTINCT FROM THE PRODUCTION EMPLOYEES AND THE OFFICE AND CLERICAL EMPLOYEES. RATHER THAN BEING PART OF EITHER THE PRODUCTION OR OFFICE UNITS, SUCH TECHNOLOGISTS AND TECHNICIANS AND PERSONS REGULARLY ASSOCIATED WITH THEM IN THEIR WORK MAY PROPERLY FORM AN APPROPRIATE BARGAINING UNIT OF THEIR OWN.
24. HOWEVER, IN THIS CASE, THE NECESSARY FACTS FROM WHICH THE BOARD COULD DEFINE A SEPARATE BARGAINING UNIT FOR TECHNOLOGISTS AND TECHNICIANS ARE NOT BEFORE US AND NEITHER PARTY IN ARGUMENT OFFERED ANY REAL ASSISTANCE IN THIS DIRECTION.
25. IN ADDITION, IT IS NOT WITHOUT INTEREST TO NOTE THAT NO GROUP OF EMPLOYEES OPPOSED THE APPLICATION OR CAME FORWARD TO ARGUE THE DESIRABILITY OF A BARGAINING UNIT WHICH WOULD SEPARATE THEM FROM THE OFFICE AND CLERICAL UNIT.
26. WHILE SOME OF THE DISPUTED PERSONS PERFORM FUNCTIONS WHICH CAUSE THEM TO HAVE A COMMUNITY OF INTEREST WITH OTHER PERSONS PERFORMING SIMILAR FUNCTIONS, SUCH INTEREST IS SHARED BY MANY OF THE TECHNICIANS WHOM THE RESPONDENT SPECIFICALLY AGREED SHOULD BE INCLUDED IN THE BARGAINING UNIT WITH OTHER OFFICE AND CLERICAL EMPLOYEES. SINCE BOTH PARTIES IN THIS CASE PROPOSED A UNIT ENCOMPASSING "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES" TO BE APPROPRIATE AND HAVING REGARD FOR THE FACT THAT THE BOARD HAS OFTEN FOUND SUCH BARGAINING UNITS TO BE APPROPRIATE, THE BOARD DOES NOT CONSIDER THAT VIOLENCE WOULD BE DONE TO ANY OF ITS PRACTICES OR POLICIES IF SUCH PERSONS WERE INCLUDED IN A SINGLE OFFICE BARGAINING UNIT IN THE CIRCUMSTANCES OF THIS CASE.
27. IN THE ABSENCE OF CONCLUSIVE EVIDENCE AND ARGUMENT IN FAVOUR OF CREATING A SEPARATE BARGAINING UNIT WHICH WOULD INCLUDE SOME OF THE PERSONS IN DISPUTE AND HAVING REGARD FOR THE AGREEMENT OF THE PARTIES ABOVE REFERRED TO, WE ARE NOT DISPOSED TO SEVER A GROUP OF EMPLOYEES FROM THE USUAL OFFICE, CLERICAL AND TECHNICAL BARGAINING UNIT WHICH HAS BEEN APPLIED FOR IN THIS CASE.
28. THE RESPONDENT ARGUED THAT THE MINING ACT R.S.O. 1960 c. 241 IMPOSED UPON MANAGEMENT CERTAIN RESPONSIBILITIES (E.G. SAFETY). THE RESPONDENT FURTHER ARGUED THAT THE DUTIES IMPOSED ON MANAGEMENT BY THE MINING ACT WHEN PERFORMED MUST OF NECESSITY BE MANAGEMENT FUNCTIONS. THE BOARD DOES NOT ACCEPT THIS ARGUMENT. IT DOES NOT NECESSARILY FOLLOW THAT STATUTORY DUTIES ARE OF NECESSITY MANAGEMENT FUNCTIONS. MANAGEMENT MAY AND OFTEN DOES ACT THROUGH ITS EMPLOYEES IN CARRYING OUT ITS DUTIES TO ACHIEVE ITS OBJECTIVES. ONE OF THE PRIME AND BASIC RESPONSIBILITIES OF MANAGEMENT IN THE INSTANT CASE IS THE REMOVAL OF ORE FROM ITS MINES AND EVERY EMPLOYEE OF THE RESPONDENT DEVOTES HIS TIME DIRECTLY OR INDIRECTLY TO THIS END. WHILE THE QUESTION OF SAFETY IS A STATUTORY RESPONSIBILITY OF MANAGEMENT, SAFETY IS THE CONCERN AND RESPONSIBILITY OF EVERY PERSON IN THE MINE EVEN THOUGH THE COMPANY EMPLOYS SPECIALISTS WITH RESPECT TO THIS MATTER. MANAGEMENT HAS A GREAT MANY RESPONSIBILITIES AND DUTIES WHICH ARE IMPLEMENTED THROUGH ITS EMPLOYEES.
29. MOST OF THE PERSONS IN DISPUTE HAVE MORE THAN ONE FUNCTION AND GENERALLY SPEAKING IT IS THE WEIGHT OR EMPHASIS ATTACHED TO THE DIFFERENT FUNCTIONS WHICH MUST DETERMINE ON WHICH SIDE OF THE MANAGERIAL LINE THAT THE PERSONS FALL.

SENIOR OR SKILLED EMPLOYEES OFTEN HAVE MORE RESPONSIBILITIES THAN OTHER RANK AND FILE EMPLOYEES AND THEY EXERCISE CERTAIN CONTROL AND DIRECTION OVER THE OTHER EMPLOYEES BECAUSE OF THEIR GREATER EXPERIENCE AND SKILL. IT IS THE BOARD'S DIFFICULT TASK TO DETERMINE WHETHER THE ADDITIONAL RESPONSIBILITIES ARE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT OR ARE MERELY INCIDENTAL TO THE PRIME PURPOSE FOR WHICH THE EMPLOYEE IS ENGAGED (I.E. TO PERFORM WORK PROPERLY PERFORMED BY PERSONS WITHIN THE BARGAINING UNIT). IF THE MAJORITY OF A PERSON'S TIME IS OCCUPIED BY WORK SIMILAR TO THAT PERFORMED BY EMPLOYEES WITHIN THE BARGAINING UNIT AND SUCH PERSON HAS NO EFFECTIVE CONTROL OR AUTHORITY OVER THE EMPLOYEES IN THE BARGAINING UNIT BUT IS MERELY A CONDUIT CARRYING ORDERS OR INSTRUCTIONS FROM MANAGEMENT TO THE EMPLOYEES, THE PERSON CANNOT BE SAID TO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. ON THE OTHER HAND, IF A PERSON IS PRIMARILY ENGAGED IN SUPERVISION AND DIRECTION OF OTHER EMPLOYEES AND HAS EFFECTIVE CONTROL OVER THEIR EMPLOYMENT RELATIONSHIP, EVEN THOUGH THE PERSON OCCASIONALLY PERFORMS WORK SIMILAR TO THE RANK OF FILE EMPLOYEES WHEN AN EMERGENCY ARISES OR TO RELIEVE AN EMPLOYEE DURING OCCASIONAL PERIODS OF ABSENCE OR EVEN TO PERFORM A PARTICULARLY IMPORTANT JOB REQUIRING SPECIAL SKILL AND EXPERIENCE, SUCH OCCASIONAL WORK IN NO WAY DEROGATES FROM HIS PRIME FUNCTION AS A PERSON EMPLOYED IN A MANAGERIAL CAPACITY. WHEN ASSESSING A PERSON'S DUTIES AND RESPONSIBILITIES THE BOARD DOES NOT LOOK AT ANY ONE FUNCTION IN ISOLATION BUT VIEWS ALL FUNCTIONS IN THEIR ENTIRETY. AS STATED IN THE MCDougALL CASE ABOVE REFERRED TO, TITLES ALONE ARE NOT OF MUCH ASSISTANCE IN DETERMINING WHAT A PERSON'S FUNCTIONS REALLY ARE.

30. WHILE THE CASES CITED ABOVE WOULD SEEM TO INDICATE THAT WHILE A PERSON MAY HAVE MINOR SUPERVISORY FUNCTIONS OR VERY LIMITED CONFIDENTIAL FUNCTIONS IN MATTERS RELATING TO LABOUR RELATIONS, IF SUCH FUNCTIONS ARE MERELY INCIDENTAL TO THEIR MAIN FUNCTION AND ARE OF SUCH A NATURE THAT THEY CANNOT BE SAID TO MATERIALLY EFFECT THE EMPLOYMENT RELATIONSHIP OF THE RESPONDENT'S EMPLOYEES, SUCH PERSONS SHOULD NOT BE EXCLUDED FROM COLLECTIVE BARGAINING BY REASON OF SECTION 1(3)(B) OF THE ACT. UNLESS A PERSON WHO REGULARLY PERFORMS WORK SIMILAR TO PERSONS IN A BARGAINING UNIT HAS INDEPENDENT DISCRETIONARY POWERS RATHER THAN MERELY INCIDENTAL REPORTING FUNCTIONS WHICH ARE SUBJECT TO THE DISCRETION AND AUTHORITY OF HIGHER PERSONS IN MANAGEMENT, THERE IS NO REASON TO EXCLUDE SUCH A PERSON FROM COLLECTIVE BARGAINING.

31. SIMILAR CRITERIA APPLY TO PERSONS ALLEGED TO BE EMPLOYED IN CONFIDENTIAL CAPACITIES IN MATTERS RELATING TO LABOUR RELATIONS. A PERSON TO BE EXCLUDED UNDER THIS PROVISION MUST BE "EMPLOYED IN A CONFIDENTIAL CAPACITY" I.E., SUCH CAPACITY MUST BE PART OF HIS REGULAR DUTIES. AN ACCIDENTAL OR ISOLATED INVOLVEMENT IN SOME ASPECT OF LABOUR RELATIONS IS NOT SUFFICIENT, IN OUR VIEW, TO EXCLUDE A PERSON FROM COLLECTIVE BARGAINING. HOWEVER, A REGULAR MATERIAL INVOLVEMENT IN MATTERS RELATING TO LABOUR RELATIONS WHICH ARE CONFIDENTIAL BECAUSE THEIR DISCLOSURE WOULD ADVERSELY AFFECT THE INTEREST OF THE EMPLOYER WOULD EXCLUDE A PERSON PURSUANT TO THE PROVISIONS OF SECTION 1(3)(B) OF THE ACT. AS CAN READILY BE SEEN, THE DEGREE OF INVOLVEMENT AND THE EXTENT OF THE CONFIDENTIAL NATURE OF THE MATTERS DEALT WITH BECOME IMPORTANT FACTORS TO BE CONSIDERED IN DETERMINING EXCLUSIONS UNDER THESE PROVISIONS.

32. HAVING REGARD TO THE AGREEMENT OF THE PARTIES THE BOARD FINDS THAT ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF SUDBURY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENTS BINDING UPON THE RESPONDENT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

33. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT

M. G. KUMMU	}	PERSONS CLASSIFIED BY THE RESPONDENT AS WORK STUDY CLERK TYPISTS;
R. McDONALD		
S. M. RHUDE		
J. M. WINCH		
M. E. BRAGG		

AND THAT

W. U. ALTO	}	PERSONS CLASSIFIED BY THE RESPONDENT AS FIRST AID ATTENDANTS;
A. A. MCPHEE		
H. M. BLANEY		
W. PAULIN		
L. P. MONGRAIN		
A. C. SIMPSON		
F. W. MCAULEY)	

AND THAT

E. L. HUSSEY - A PERSON CLASSIFIED BY THE RESPONDENT
AS FIRST AID TRAINEE;

AND THAT

A. W. YOISTEN - A PERSON CLASSIFIED BY THE RESPONDENT
AS RELIEF FIRST AID MAN;

AND THAT

I. R. WESTBROOK	}	PERSONS CLASSIFIED BY THE RESPONDENT AS TELEPHONE OPERATORS;
B. B. DUNCAN		

AND THAT

D. C. MCPHAIL - A PERSON CLASSIFIED BY THE RESPONDENT
AS PLANT SCHEDULING MAN;

AND THAT

S. M. BYRNE	}	PERSONS CLASSIFIED BY THE RESPONDENT AS SECRETARIES;
E. K. ELCHYSHYN		
M. A. CHAPPELLE		
J. A. WILSON		

AND THAT

E. G. KIRWAN	}	PERSONS CLASSIFIED BY THE RESPONDENT AS CLERKS;
R. A. TREITZ		
M. G. LAMOUREUX		
R. A. PRENOL		
R. WOOD		
M. P. BLASUTTI		

P. V. ARMSTRONG }
N. W. BEATON }
E. D. DURLING }
J. R. LEDUC }
R. H. CRAIG }

AND THAT

G. LENCHUK - A PERSON CLASSIFIED BY THE RESPONDENT
AS CHIEF CLERK;

AND THAT

MILT BEACH - A PERSON CLASSIFIED BY THE RESPONDENT
AS SENIOR SURVEYOR;

ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

34. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT

I. PHILOPOW	PERSONNEL SECRETARY
W. B. MORRISON	CONTROL ASST. TO MANAGEMENT
H. E. NEY	ASST. TO MET. ENG. PROJECTS (PROFESSIONAL ENGINEER)
W. A. SCOTT	ASST. TO PERSONNEL SUPERVISOR
N. M. MACKILLOP	PROPERTY AGENT SUDBURY, ONTARIO
G. R. STOCK	HISTORIAN

ARE NOT INCLUDED IN THE BARGAINING UNIT PURSUANT TO THE PROVISIONS OF SECTION
(1)(3)(B) OF THE LABOUR RELATIONS ACT; AND THAT

K. P. HO
F. Y. JAMES
K. L. AGNEW
F. M. MAKARINSKY
J. M. WOJAKOWSKI
C. R. JOSE
J. D. PURDIE
A. J. MCGUIRE
J. F. JACKSON
E. E. HEASLIP
J. S. SCOTT

ARE PROFESSIONAL ENGINEERS AND ARE NOT INCLUDED IN THE BARGAINING UNIT PURSUANT
TO THE PROVISIONS OF SECTION 1(3)(A) OF THE LABOUR RELATIONS ACT; AND THAT

L. P. DOLAN
A. FERRY
M. M. CLEROUX
E. M. JUSSILA
M. C. CLARKE
B. A. WALLACE

ARE SECRETARIES EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND ARE NOT INCLUDED IN THE BARGAINING UNIT PURSUANT TO THE PROVISIONS OF SECTION 1(3)(B) OF THE ACT; AND THAT

N. S. NIEMI - A PERSON CLASSIFIED BY THE RESPONDENT
AS CLERK

IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND IS NOT INCLUDED IN THE BARGAINING UNIT PURSUANT TO THE PROVISIONS OF SECTION 1(3)(B) OF THE ACT; AND THAT

M. A. TENHONEN - A PERSON CLASSIFIED BY THE RESPONDENT
AS PERSONNEL TYPIST

IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND IS NOT INCLUDED IN THE BARGAINING UNIT PURSUANT TO THE PROVISIONS OF SECTION 1(3)(B) OF THE ACT; AND THAT

K. A. BAILLIE
E. E. EASTON
A. L. MCKAGUE
J. A. WATTS
J. D. RANNIE
R. W. SISCOE

EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

35. HAVING CONSIDERED ALL THE EVIDENCE CONTAINED IN THE REPORTS OF THE EXAMINER TOGETHER WITH THE REPRESENTATIONS OF THE PARTIES AND THE CASES ABOVE REFERRED TO, AND THE BOARD HAVING CONSIDERED THE INDICIA OF MANAGEMENT AS OUTLINED ABOVE IN THE CONTEXT OF THE EVIDENCE OF THIS CASE INCLUDING THE NATURE OF THE CAPACITY IN WHICH THE DISPUTED PERSONS WERE EMPLOYED WITH RESPECT TO LABOUR RELATIONS, AND HAVING ASSESSED ALL THE FACTORS WHICH IT HAS BEFORE IT, FOR THE PURPOSES OF CLARITY THE BOARD DECLARES AS FOLLOWS:

DON WHITE	- ASSISTANT PLANTS OFFICE SUPERVISOR
H. C. BILLSBOROUGH	- ASSISTANT ACCOUNTANT SUDBURY OPERATIONS
CLAUDE LEDUC	- DATA PROCESSING ASSISTANT SUPERVISOR
ALEX ALAMANKAS	- LEAD DRAFTSMAN
E. J. DUROCHER	- FALCONBRIDGE ASSISTANT STOREKEEPER
ROBERT STEWART	- FECUNIUS STOREKEEPER
C. DAoust	- HARDY STOREKEEPER
IDRIS LEWIS	- SMELTERS SCHEDULING SUPERVISOR
G. LACEY	- PRINTING AND STATIONERY CLERK
J. C. GILL	- SALARY PAYROLL CLERK
D. R. SHEPPARD	- PAYROLL CHIEF CLERK
T. F. PUGSLEY	- FALCONBRIDGE MINE JUNIOR PLANNING ENGINEER
I. J. DICKIE	- MINE RESEARCH ENGINEER
H. M. HODGSON	- FALCONBRIDGE FIELD SURVEYOR
W. G. PESCHKE	- ONAPING FIELD SURVEYOR
T. P. ARMSTRONG	- FALCONBRIDGE MINE UNDERGROUND GEOLOGIST

P. M. FILLMORE	- FALCONBRIDGE MINE UNDERGROUND GEOLOGIST	
R. G. KREINER	- STRATHCONA UNDERGROUND GEOLOGIST	
R. H. HEWINS	- PETOGRAPHER GEOLOGIST	
M. A. NICHOL	- FALCONBRIDGE MINE DEVELOPMENT GEOLOGIST	
G. M. ARCHIBALD	- ASSISTANT STUDIES GEOLOGIST	
J. T. EGAN	- FALCONBRIDGE MINE GEOLOGICAL TECHNICIAN	
F. D. DELABBIO	- HARDY MINE UNDERGROUND GEOLOGICAL TECHNICIAN	
D. A. FRASER	- STRATHCONA GEOLOGICAL TECHNICIAN	
J. C. SECENJ	- HARDY MINE UNDERGROUND TECHNICIAN	
R. J. THOMSON	- FALCONBRIDGE SENIOR WORK STUDY OBSERVER	
W. B. WOOD	- ONAPING SENIOR WORK STUDY OBSERVER	
M. J. CHAPUT	- ONAPING JUNIOR WORK STUDY OBSERVER	
D. P. GOBBO	- ONAPING JUNIOR WORK STUDY OBSERVER	
J. D. SHEA	- ONAPING JUNIOR WORK STUDY OBSERVER	
B. H. CHRISTIANSON	- FALCONBRIDGE JUNIOR WORK STUDY OBSERVER	
W. A. ECCLESTONE	- FALCONBRIDGE JUNIOR WORK STUDY OBSERVER	
P. G. OVENS	- WORK STUDY TRAINEE	
L. J. LAUZON	- WORK STUDY TRAINEE	
L. B. MACMILLAN	- FALCONBRIDGE SERVICES WORK STUDY OBSERVER	
R. J. PILOTTE	- FALCONBRIDGE SERVICES SENIOR WORK STUDY OBSERVER	
L. R. MAN	- FALCONBRIDGE SERVICES JUNIOR WORK STUDY OBSERVER	
R. J. HAYWOOD	- FALCONBRIDGE SERVICES WORK STUDY OBSERVER	
O. J. WATTS	- BONUS SECTION LEADER	
H. A. ROBILLARD	- BONUS SECTION LEADER	
E. E. MACLEAN	- FALCONBRIDGE MINE BONUS MAN	
A. E. CHINN	- EAST MINE BONUS MAN	
R. V. GRANDMAISON	- FALCONBRIDGE MINE BONUS MAN	
R. KIILASPA	- FALCONBRIDGE MINE BONUS MAN	
S. A. TIMS	- FALCONBRIDGE MINE BONUS MAN	
A. L. ARMSTRONG	- ONAPING MINE BONUS MAN	
J. V. DEROCHIE	- NORTH MINE BONUS MAN	
A. F. WINSA	- STRATHCONA BONUS MAN	
G. W. CLARK	}	SAFETY INSPECTORS
J. HEIT		
J. W. THOM		
C. R. MCCENDIE		
R. P. TROTT	}	SENIOR FIRST AID ATTENDANTS
R. H. OGLE		
J. DAVIDSON		
C. L. MUIR	}	BUYERS
E. M. ROBITAILLE		
C. G. SUTTON		
P. G. HUARD		
L. J. HENRY		-ASSISTANT TO CHIEF PLANT ENGINEER

ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

36. FOR THE PURPOSES OF CLARITY THE BOARD FURTHER DECLARES THAT

W. O. WILSON	- PROJECTS ACCOUNTANT SUDBURY OPERATIONS
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BRUCE NEWELL	- ACCOUNTANT SUDBURY OPERATIONS
DENNIS LABERGE	- SENIOR SURVEYOR
A. LANDSBERG	- SENIOR SURVEYOR
JOHN BLACKWELL	- SENIOR SURVEYOR
GEORGE PINDER	- METALLURGICAL RESEARCH TECHNICIAN
J. MITCHELL	- FALCONBRIDGE STOREKEEPER
ALLAN WILSON	- PLANTS OFFICE SUPERVISOR
J. FRANKLIN	- PLANTS DRAFTSMAN
K. E. BLASZCZYK	- DESIGN ENGINEER MECHANIC
F. G. PICKARD	- STRATHCONA PROFESSIONAL METALLURGICAL ENGINEER
M. DEROUIN	- FALCONBRIDGE MINE VENTILATION ENGINEER
A. C. BIGG	- RESEARCH METALLURGIST
P. R. BIRCH	- RESEARCH METALLURGIST
M. A. GOUDIE	- RESEARCH MINERALOGIST
C. B. MACKENZIE	- RESEARCH METALLURGIST
W. D. HARRISON	- SPECIAL STUDIES GEOLOGIST
A. J. CULL	- WORK STUDY LEADER
*J. F. ROBERTSON	- SMELTER EXPERIMENTAL TECHNICIAN
P. E. CARROLL	- INSTRUMENTATION TECHNICIAN
R. S. SOUCIE	- STORES ACCOUNTANT
E. T. OWENS	- BENEFITS AGENT

EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

37. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

38. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER E. BOYER: (SEPTEMBER 14, 1966).

I DISSENT FROM THE MAJORITY DECISION WITH RESPECT TO

W. D. HARRISON	- SPECIAL STUDIES GEOLOGIST
A. J. CULL	- WORK STUDY LEADER
R. S. SOUCIE	- STORES ACCOUNTANT

WHOM I WOULD FIND SHOULD BE INCLUDED IN THE BARGAINING UNIT.

DECISION OF BOARD MEMBER H. F. IRWIN: (SEPTEMBER 14, 1966).

I DISSENT FROM THE MAJORITY DECISION WITH RESPECT TO

ROBERT STEWART	- FECUNIUS STOREKEEPER
C. DAoust	- HARDY STOREKEEPER
J. C. GILL	- SALARY PAYROLL CLERK

D. R. SHEPPARD	- PAYROLL CHIEF CLERK
R. J. THOMSON	- FALCONBRIDGE SENIOR WORK STUDY OBSERVER
W. B. WOOD	- ONAPING SENIOR WORK STUDY OBSERVER
R. J. PILOTTE	- FALCONBRIDGE SERVICES SENIOR WORK STUDY OBSERVER
C. L. MUIR	} BUYERS
E. M. ROBITAILLE	
C. G. SUTTON	
P. G. HUARD	

WHOM I WOULD FIND EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND SHOULD BE EXCLUDED FROM THE BARGAINING UNIT; AND

T. F. PUGSLEY	- FALCONBRIDGE MINE JUNIOR PLANNING ENGINEER
I. J. DICKIE	- MINE RESEARCH ENGINEER
H. M. HODGSON	- FALCONBRIDGE FIELD SURVEYOR
W. G. PESCHKE	- ONAPING FIELD SURVEYOR
T. P. ARMSTRONG	- FALCONBRIDGE MINE UNDERGROUND GEOLOGIST
P. M. FILLMORE	- FALCONBRIDGE MINE UNDERGROUND GEOLOGIST
R. G. KREINER	- STRATHCONA UNDERGROUND GEOLOGIST
R. H. HEWINS	- PETOGRAPHER GEOLOGIST
M. A. NICHOL	- FALCONBRIDGE MINE DEVELOPMENT GEOLOGIST
G. M. ARCHIBALD	- ASSISTANT STUDIES GEOLOGIST
J. T. EGAN	- FALCONBRIDGE MINE GEOLOGICAL TECHNICIAN
F. D. DELABBIO	- HARDY MINE UNDERGROUND GEOLOGICAL TECHNICIAN
D. A. FRASER	- STRATHCONA GEOLOGICAL TECHNICIAN
J. C. SECENJ	- HARDY MINE UNDERGROUND TECHNICIAN
H. C. WESLAKE	- STRATHCONA MINE UNDERGROUND TECHNICIAN
M. J. CHAPUT	- ONAPING JUNIOR WORK STUDY OBSERVER
D. P. GOBBO	- ONAPING JUNIOR WORK STUDY OBSERVER
J. D. SHEA	- ONAPING JUNIOR WORK STUDY OBSERVER
B. H. CHRISTIANSON	- FALCONBRIDGE JUNIOR WORK STUDY OBSERVER
W. A. ECCLESTONE	- FALCONBRIDGE JUNIOR WORK STUDY OBSERVER
P. G. OVENS	- WORK STUDY TRAINEE
L. J. LAUZON	- WORK STUDY TRAINEE
L. B. MACMILLAN	- FALCONBRIDGE SERVICES WORK STUDY OBSERVER
L. R. MAN	- FALCONBRIDGE SERVICES JUNIOR WORK STUDY OBSERVER
R. J. HAYWOOD	- FALCONBRIDGE SERVICES WORK STUDY OBSERVER

WHOM I WOULD FIND SHOULD BE INCLUDED IN A SEPARATE BARGAINING UNIT.

11476-65-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. THE UNIVERSITY OF GUELPH (RESPONDENT) V. CANADIAN GUARDS ASSOCIATION (INTERVENER) V. THE CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND H. F. IRWIN.

APPEARANCES AT HEARING: D. F. O. HERSEY, G. O. JONES, MRS. B. S. A. DAVIES
AND C. COOK FOR THE APPLICANT, C. A. MORLEY, J. E. HURST AND D. G. LINGWOOD
FOR THE RESPONDENT, A. LIGHT AND G. SIMPSON FOR CANADIAN GUARDS ASSOCIATION,
AND M. A. HEELEY FOR THE CANADIAN UNION OF OPERATING ENGINEERS.

DECISION OF J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN:
(SEPTEMBER 20, 1966).

1. PURSUANT TO ITS ENDORSEMENT OF THE RECORD IN THIS MATTER, DATED JUNE 17TH, 1966, THE BOARD TOOK A VIEW OF THE RESPONDENT'S PREMISES AND OF CERTAIN OF ITS OPERATIONS. THE INFORMATION THUS OBTAINED CONSTITUTES THE EVIDENCE ON WHICH, WITH THE AGREEMENT OF THE PARTIES, THE BOARD HAS REACHED THE CONCLUSIONS SET OUT IN THIS ENDORSEMENT.

2. IT IS ALLEGED BY THE RESPONDENT THAT AGRICULTURAL ASSISTANTS, AGRICULTURAL WORKERS AND ANIMAL ATTENDANTS IN ITS EMPLOY ARE PERSONS EMPLOYED IN AGRICULTURE AND ARE THUS, BY VIRTUE OF SECTION 2(B) OF THE LABOUR RELATIONS ACT, PERSONS TO WHOM THE ACT DOES NOT APPLY. THESE PERSONS ARE EMPLOYED BY THE RESPONDENT IN THE COURSE OF ITS GENERAL UNDERTAKING IN THE AREA OF AGRICULTURAL SCIENCE AND RESEARCH. THEIR TASKS INCLUDE THE TENDING OF POULTRY, CATTLE AND SWINE, TILLAGE OF THE SOIL, CLEANING OF BARNs AND RELATED BUILDINGS, AND COGNATE LABOURING TASKS. THESE JOBS ARE BASICALLY THE SAME AS THOSE DONE ON FARMS. THE PERSONS HIRED FOR THESE OCCUPATIONS HAVE BEEN, IN GENERAL, FARM WORKERS PRIOR TO THEIR EMPLOYMENT WITH THE RESPONDENT. THE RESPONDENT'S EMPLOYEES, IN THE COURSE OF THEIR WORK, MAINTAIN MORE COMPLETE AND MORE PRECISE RECORDS THAN WOULD BE USUAL IN FARMING OPERATIONS, BUT THEIR WORK IN THIS REGARD IS LIMITED TO THE MAKING OF ENTRIES IN RECORDS ORIGINATED BY AND MAINTAINED FOR THE USE OF THE RESPONDENT'S TECHNICAL OR PROFESSIONAL STAFF. THIS RECORD-KEEPING IS INCIDENTAL TO THE MAIN WORK OF THE EMPLOYEES IN QUESTION.

3. THE BOARD HAS IN A NUMBER OF CASES CONSIDERED AN EMPLOYER'S AGRICULTURAL OPERATIONS AS SEVERABLE FROM HIS COMMERCIAL OPERATIONS. THUS THE ACTUAL PRODUCTION OF CROPS HAS BEEN CONSIDERED TO BE SEVERABLE FROM THE CLEANING, PROCESSING OR SHIPPING OF FOOD PRODUCTS. PERSONS ENGAGED IN THE LATTER OPERATIONS HAVE NOT BEEN CONSIDERED TO BE EMPLOYED IN AGRICULTURE, WHEREAS PERSONS ENGAGED IN THE ACTUAL PRODUCTION OF AGRICULTURAL PRODUCTS HAVE BEEN FOUND TO BE EMPLOYED IN AGRICULTURE WITHIN THE MEANING OF SECTION 2(B) OF THE LABOUR RELATIONS ACT. SEE THE ONTARIO TREE FRUITS Co-operative LIMITED CASE, VOL 2, C.C.H. CANADIAN LABOUR LAW REPORTS, ¶16,235; THE FEDERAL FARMS LIMITED CASE, VOL 2, C.C.H. CANADIAN LABOUR LAW REPORTS, ¶16,292; AND THE HOLLAND RIVER GARDENS COMPANY LTD. CASE, VOL 2, C.C.H. CANADIAN LABOUR LAW REPORTS, ¶16,304.

4. IN THE INSTANT CASE IT IS OUR OPINION THAT THE AGRICULTURAL OPERATIONS OF THE RESPONDENT ARE SEVERABLE FROM ITS OTHER OPERATIONS. IT IS TRUE THAT THE WORK OF THE EMPLOYEES ENGAGED IN ANIMAL HUSBANDRY AND FIELD WORK IS, IN A PARTICULAR SENSE, A FUNCTION OF THE UNIVERSITY'S RESEARCH ACTIVITY. IN OUR VIEW, THIS EMPLOYMENT MUST, NEVERTHELESS, BE PRIMARILY CHARACTERIZED AS "AGRICULTURE". THE SOMEWHAT MORE SOPHISTICATED CHARACTER OF THIS WORK FROM THAT

PERFORMED IN MOST FARMING OPERATIONS DOES NOT ALTER THIS BASIC CHARACTER. THE BOARD FINDS THAT PERSONS ENGAGED AS AGRICULTURAL ASSISTANTS, AGRICULTURAL WORKERS AND ANIMAL ATTENDANTS ARE EMPLOYED IN AGRICULTURE WITHIN THE MEANING OF SECTION 2(B) OF THE LABOUR RELATIONS ACT. IT FOLLOWS THAT THE LABOUR RELATIONS ACT DOES NOT APPLY TO THESE PERSONS. THIS RULING, HOWEVER, IS NOT MADE WITH RESPECT TO ANY PERSONS WHO MAY BE CLASSIFIED AS AGRICULTURAL ASSISTANTS, AGRICULTURAL WORKERS OR ANIMAL ATTENDANTS OTHER THAN THOSE ENGAGED IN THE TILLAGE OF THE SOIL OR ANIMAL HUSBANDRY, AND, IN PARTICULAR, THIS RULING IS NOT INTENDED TO APPLY TO SUCH PERSONS ENGAGED IN HORTICULTURE OR VETERINARY SERVICES.

5. THE BOARD NOTES THAT CERTAIN EMPLOYEES OF THE RESPONDENT ARE EMPLOYED IN HORTICULTURE. SUCH PERSONS ARE NOT, HOWEVER, EMPLOYED BY AN EMPLOYER WHOSE PRIMARY BUSINESS IS AGRICULTURE OR HORTICULTURE, SO THAT THE PROVISIONS OF SECTION 2(C) OF THE ACT WOULD NOT APPLY IN THE CASE OF SUCH PERSONS. NO REPRESENTATIONS IN THIS REGARD HAVE BEEN MADE.

6. REPRESENTATIONS WERE MADE BY THE APPLICANT AND THE RESPONDENT WITH RESPECT TO THE DESCRIPTION OF THE UNIT OR UNITS OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING. THE APPLICANT SUGGESTED A BARGAINING UNIT CONSISTING OF ALL EMPLOYEES OF THE RESPONDENT WITH CERTAIN DESIGNATED EXCEPTIONS. THE RESPONDENT HAS SUGGESTED THAT THERE BE THREE BARGAINING UNITS: FIRST, ALL TRADES MAINTENANCE AND SERVICE EMPLOYEES; SECOND, ALL OFFICE, CLERICAL OR STENOGRAPHIC EMPLOYEES; AND THIRD, ALL LABORATORY AND TECHNICAL EMPLOYEES. EACH OF THESE UNITS IS SUBJECT TO CERTAIN DESIGNATED EXCEPTIONS. HAVING REGARD TO ALL THE CIRCUMSTANCES, THE BOARD IS OF OPINION THAT THERE ARE TWO UNITS OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING:

FIRST, A UNIT CONSISTING OF OFFICE, CLERICAL AND
TECHNICAL EMPLOYEES, INCLUDING LABORATORY EMPLOYEES;
AND

SECOND, A UNIT CONSISTING OF OTHER EMPLOYEES
EXCEPTING THOSE REPRESENTED BY THE FIRST OR
SECOND INTERVENER.

A NUMBER OF QUESTIONS ARISE WITH RESPECT TO THE APPROPRIATE EXCLUSIONS FROM THESE BARGAINING UNITS, AND THERE MAY WELL ARISE QUESTIONS AS TO THE LISTS OF EMPLOYEES COMING WITHIN EACH OF THESE BARGAINING UNITS. IN OUR OPINION, THESE MATTERS WOULD BE DEALT WITH MOST EXPEDITIOUSLY AT A HEARING CONDUCTED BEFORE AN EXAMINER GIVEN BROAD POWERS OF INQUIRY.

7. MR. W. G. JACKSON, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON:

- (1) THE COMPOSITION OF THE BARGAINING UNITS,
HAVING REGARD TO PARAGRAPH 6 OF THIS ENDORSEMENT;
- (2) THE LIST OF EMPLOYEES FURNISHED BY THE RESPONDENT;
- (3) THE DUTIES AND RESPONSIBILITIES OF PERSONS WHOSE
INCLUSION IN OR EXCLUSION FROM EITHER OF THE
BARGAINING UNITS REFERRED TO IN PARAGRAPH 6 OF
THIS ENDORSEMENT MAY BE CONTESTED.

DECISION OF BOARD MEMBER E. BOYER:

(SEPTEMBER 20, 1966).

I DISSENT.

I DO NOT BELIEVE THAT SECTION 2(b) OF THE LABOUR RELATIONS ACT WAS INTENDED TO EXCLUDE FROM THE OPERATIONS OF THE ACT PERSONS SUCH AS THOSE DEALT WITH IN THE BOARD'S DECISION. IN THE PAST THE APPLICANT REPRESENTED ALL OF THE EMPLOYEES OF THE RESPONDENT, INCLUDING THESE "AGRICULTURAL" WORKERS, DURING THE TIME WHEN EMPLOYEES OF THE ONTARIO AGRICULTURAL COLLEGE, NOW A PART OF THE UNIVERSITY OF GUELPH, WERE PUBLIC EMPLOYEES.

11694-66-R: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. DAILY JOURNAL-RECORD (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT HEARING: PURDY CHURCHILL FOR THE APPLICANT, AND F. G. HAMILTON, B. W. SLAIGHT AND W. D. COTTON FOR THE RESPONDENT.

DECISION OF J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN: (SEPTEMBER 7, 1966).

. . .

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE EMPLOYED IN ITS NEWSPAPER AND JOB PRINTING COMPOSING AND PRESS ROOMS, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE AGREEMENT OF THE PARTIES WITH RESPECT TO THE ABOVE DESCRIBED BARGAINING UNIT WAS SUBJECT TO THE RESERVATION THAT THE DESCRIPTION SHOULD NOT PREJUDICE THE POSITION OF TELETYPESSETTERS, WHOSE STATUS WAS REFERRED TO THE BOARD. THE APPLICANT SOUGHT THE INCLUSION OF TELETYPESSETTERS IN THE BARGAINING UNIT, AND EVIDENCE WITH RESPECT TO THIS ISSUE WAS TAKEN BY THE EXAMINER AND IT IS SET OUT IN HIS REPORT. THE TELETYPESSETTER OPERATOR IS NOT EMPLOYED IN THE SAME PART OF THE PREMISES AS THE EMPLOYEES IN THE COMPOSING AND PRESS ROOMS, ALTHOUGH HER WORK DOES RELATE TO THE PRODUCTION PROCESS OF THE RESPONDENT. IT MAY BE REMARKED THAT THE APPLICANT DID NOT SEEK TO INCLUDE SCAN-ENGRAVER OPERATORS IN THE BARGAINING UNIT, ALTHOUGH THE WORK OF A SCANENGRAVER RELATES AT LEAST AS CLOSELY TO THE PRODUCTION PROCESS AS THAT OF THE TELETYPE-SETTER.

5. HAVING REGARD TO ALL OF THE EVIDENCE, THE BOARD IS OF OPINION THAT THE COMMUNITY OF INTEREST OF THE TELETYPESSETTER OPERATORS LIES, AT LEAST IN THE CASE OF THE RESPONDENT'S OPERATIONS, WITH OFFICE EMPLOYEES RATHER THAN WITH EMPLOYEES IN THE COMPOSING AND PRESS ROOMS. FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT TELETYPESSETTER OPERATORS ARE NOT INCLUDED IN THE BARGAINING UNIT.

...
DECISION OF BOARD MEMBER E. BOYER: (SEPTEMBER 7, 1966).

I DISSENT WITH RESPECT TO THE BOARD'S DECISION TO EXCLUDE THE
TELETYPESETTER OPERATORS FROM THE BARGAINING UNIT. I WOULD HAVE INCLUDED
TELETYPESETTERS IN THE BARGAINING UNIT ON THE GROUNDS THAT THEIR WORK FORMS
A PART OF THE PRODUCTION PROCESS.

11844-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. HEATH AND SHERWOOD
DRILLING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND D. A. PAGE.

APPEARANCES AT HEARING: LORNE INGLE FOR THE APPLICANT, AND
W. S. COOK FOR THE RESPONDENT.

DECISION OF J.F.W. WEATHERILL, VICE-CHAIRMAN, AND
BOARD MEMBER E. BOYER: (SEPTEMBER 28, 1966).

1. FOLLOWING THE REPORT OF THE EXAMINER, DATED AUGUST 3RD, 1966, THE
BOARD HELD A HEARING AT WHICH IT ENTERTAINED THE REPRESENTATIONS OF COUNSEL AS
TO THE CONCLUSIONS WHICH THE BOARD SHOULD REACH CONCERNING THE STATUS OF THE
PERSONS EXAMINED. AT THE OUTSET OF THE HEARING IT WAS CONCEDED BY COUNSEL FOR
THE APPLICANT THAT RAYMOND LAROCHELLE EXERCISED MANAGERIAL FUNCTIONS. HAVING
REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD DECLARES THAT RAYMOND LAROCHELLE
EXERCISES MANAGERIAL FUNCTIONS AND IS EXCLUDED FROM THE BARGAINING UNIT.

2. THERE REMAINS FOR DETERMINATION THE CASE OF FERNAND LAROCHELLE. FERNAND
LAROCHELLE IS CLASSIFIED AS A "RUNNER FOREMAN" AND IS IN CHARGE OF A CREW
WORKING AT THE CREAN HILL JOB SITE, LOCATED ON THE PROPERTY OF THE INTERNATIONAL
NICKEL COMPANY. THE CREW CONSISTS OF TWO SHIFTS OF TWO MEN EACH. EACH SHIFT
CONSISTS OF A "RUNNER" AND A HELPER, THE RUNNER BEING IN CHARGE OF THE SHIFT.
FERNAND LAROCHELLE, AS A RUNNER FOREMAN, IS IN OVERALL CHARGE OF THE CREW OF
FOUR, OF WHICH HE IS HIMSELF A MEMBER. THE EVIDENCE IS THAT MR. LAROCHELLE
WORKS MAINLY OPERATING, REPAIRING OR SERVICING THE DIAMOND DRILL ALMOST HUNDRED
PER CENT OF HIS TIME. THE JOB SITE IS VISITED BY A SUPERVISOR ONCE OR TWICE
A WEEK, ALTHOUGH COMMUNICATION BY TELEPHONE IS AVAILABLE AT ALL TIMES.
FERNAND LAROCHELLE IS REQUIRED TO MAINTAIN AND SUBMIT A NUMBER OF REPORTS
DEALING WITH HOURS WORKED, MATERIALS AND EQUIPMENT USED AND PROGRESS MADE. HE
IS NOT AUTHORIZED TO HIRE OR FIRE EMPLOYEES, OR TO IMPOSE DISCIPLINE, ALTHOUGH
HE HAS ON OCCASION REQUESTED THAT AN EMPLOYEE BE REMOVED FROM HIS CREW, AND
SUCH REQUEST WAS, ON AT LEAST ONE OCCASION, COMPLIED WITH. IT IS CLEAR THAT
MR. LAROCHELLE WOULD NOT, IN THE NORMAL COURSE, BE SAID TO EXERCISE MANAGERIAL
FUNCTIONS. IT IS ARGUED, HOWEVER, THAT BECAUSE THE CREW OF WHICH HE IS IN
CHARGE WORKS IN RELATIVE ISOLATION AND WITH INFREQUENT SUPERVISION, AND
BECAUSE OF HIS RESPONSIBILITIES IN CONNECTION WITH THE FILING OF IMPORTANT
REPORTS (ON THE BASIS OF WHICH PAYMENTS ARE MADE), HE MUST BE REGARDED AS THE
REPRESENTATIVE OF MANAGEMENT AT THE JOB SITE AND AS EXERCISING MANAGERIAL
FUNCTIONS.

3. THE MERE FACT THAT AN EMPLOYEE PERFORMS THE SAME WORK AS MEMBERS OF THE BARGAINING UNIT DOES NOT, OF COURSE, LEAD TO THE NECESSARY CONCLUSION THAT HE DOES NOT EXERCISE MANAGERIAL FUNCTIONS. IT IS QUITE POSSIBLE THAT A "WORKING FOREMAN" MAY EXERCISE MANAGERIAL FUNCTIONS. IN THE PRE-CON MURRAY LIMITED CASE, BOARD FILE NO. 10331-65-R, THE BOARD DEALT WITH THE CASE OF AN INDIVIDUAL WHO, ALTHOUGH SPENDING SOME PROPORTION OF HIS TIME DOING PHYSICAL WORK, WAS NEVERTHELESS DETERMINED BY THE BOARD TO EXERCISE MANAGERIAL FUNCTIONS. THE EXERCISE OF MINOR SUPERVISORY FUNCTIONS, HOWEVER, MERELY INCIDENTAL TO AN EMPLOYEE'S MAIN FUNCTION, WOULD NOT BE SUFFICIENT GROUNDS ON WHICH TO BASE A DETERMINATION THAT AN EMPLOYEE EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. AS WAS POINTED OUT IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, BOARD FILE NO. 10775-65-R: "UNLESS A PERSON WHO REGULARLY PERFORMS WORK SIMILAR TO PERSONS IN A BARGAINING UNIT HAS INDEPENDENT DISCRETIONARY POWERS RATHER THAN MERELY INCIDENTAL REPORTING FUNCTIONS WHICH ARE SUBJECT TO THE DISCRETION AND AUTHORITY OF HIGHER PERSONS IN MANAGEMENT, THERE IS NO REASON TO EXCLUDE SUCH A PERSON FROM COLLECTIVE BARGAINING".
4. IN THE PRE-CON MURRAY LIMITED CASE, SUPRA, THE WORKING FOREMAN IN QUESTION WAS FREQUENTLY IN COMPLETE CHARGE OF A PROJECT AND SPENT THE MAJORITY OF HIS TIME ON ACTIVE SUPERVISION OF THE MEN ON THE JOB, INCLUDING LABOURERS, MASONS, CARPENTERS AND ENGINEERS. HE HAD THE AUTHORITY TO HIRE, FIRE AND REPRIMAND EMPLOYEES, AND IN A NUMBER OF OTHER RESPECTS EXERCISED FUNCTIONS WHICH WERE CLEARLY MANAGERIAL IN NATURE. THERE IS NO REAL SIMILARITY BETWEEN THE FACTS OF THAT CASE AND THOSE OF THE INSTANT CASE.
5. WE WOULD AGREE WITH COUNSEL FOR THE RESPONDENT THAT THE FACT THAT FERNAND LAROCHELLE IS THE PERSON IN CHARGE OF A CREW AND IS WITHOUT DIRECT SUPERVISION MOST OF THE TIME IS A RELEVANT CONSIDERATION WITH RESPECT TO THE ISSUE OF HIS MANAGERIAL FUNCTIONS. WE MUST, HOWEVER, EMPHASIZE THAT THIS IS ONLY ONE CONSIDERATION AMONG A NUMBER OF OTHERS. ON THE RESPONDENT'S LINE OF ARGUMENT, WHENEVER AN EMPLOYER SENT AN EMPLOYEE OFF THE PREMISES TO PERFORM SOME TASK WITHOUT SUPERVISION, THIS "RESPONSIBILITY" WOULD CONSTITUTE A "MANAGERIAL FUNCTION". THIS ARGUMENT SIMPLY LEADS TO AN ABSURDITY. THERE ARE MANY OCCASIONS ON WHICH EMPLOYEES, WHO COULD ON NO ACCOUNT BE CONSIDERED TO EXERCISE MANAGERIAL FUNCTIONS NEVERTHELESS REPRESENT AND ARE THE AGENTS FOR THEIR EMPLOYER, HANDLING, PERHAPS, LARGE SUMS OF MONEY, OR INCURRING, IT MAY BE, SUBSTANTIAL CONTRACTUAL OR OTHER OBLIGATIONS BINDING UPON THE EMPLOYER. AN EMPLOYEE MAY OCCUPY A POSITION OF RESPONSIBILITY AND TRUST WITHOUT NECESSARILY EXERCISING MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. TO REPEAT, LACK OF IMMEDIATE SUPERVISION BY MANAGEMENT IS A RELEVANT CONSIDERATION, BUT THE WEIGHT TO BE GIVEN TO IT WILL DEPEND ON THE PARTICULAR CIRCUMSTANCES OF EACH CASE. IN THE INSTANT CASE, WE SHOULD FIND IT QUITE IMPOSSIBLE TO CONCLUDE THAT FERNAND LAROCHELLE EXERCISES MANAGERIAL FUNCTIONS.
6. HAVING REGARD TO ALL OF THE CIRCUMSTANCES, THE BOARD DECLARES THAT FERNAND LAROCHELLE DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS INCLUDED IN THE BARGAINING UNIT.
7. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING.

I DISSENT.

BECAUSE OF THE REMOTENESS OF THE LOCATIONS AT WHICH THESE EMPLOYEES WORK AND THE RESULTANT LACK OF SUPERVISION, FERNAND LAROCHELLE IS CALLED UPON TO EXERCISE FUNCTIONS WHICH ARE MANAGERIAL IN NATURE. I WOULD HAVE FOUND THAT HE SHOULD NOT BE INCLUDED IN THE BARGAINING UNIT.

11871-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. ROMAN RAILINGS CO. LTD. (RESPONDENT).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. HAUGHEY FOR THE APPLICANT,
W. FRAM AND V. COLUCCI FOR THE RESPONDENT.

DECISION OF THE BOARD: (SEPTEMBER 1, 1966).

1. BY LETTER DATED JUNE 28TH, 1966 COUNSEL FOR THE RESPONDENT ALLEGED THAT AN EMPLOYEES OF THE RESPONDENT ANNIBALE PAIANO MADE NO MONEY PAYMENT ON THE APPLICATION OF MEMBERSHIP FILED AS EVIDENCE OF MEMBERSHIP ON HIS BEHALF BY THE APPLICANT UNION. THE BOARD, AFTER MAKING ITS OWN INVESTIGATION LISTED THIS MATTER FOR HEARING ON AUGUST 15TH, 1966 FOR THE PURPOSE OF MAKING FURTHER INQUIRIES INTO THE CIRCUMSTANCES UNDER WHICH THE INITIATION FEE RELATING TO THE APPLICATION FOR MEMBERSHIP WAS ALLEGED TO HAVE BEEN PAID BY ANNIBALE PAIANO.
2. THE EVIDENCE OF ANNIBALE PAIANO IS THAT HE WAS APPROACHED TO JOIN THE APPLICANT TRADE UNION BY JERRY HAUGHEY, WHO WAS IDENTIFIED AS A BUSINESS AGENT FOR THE APPLICANT TRADE UNION. PAIANO TESTIFIED THAT HAUGHEY CAME TO THE APARTMENT BUILDING WHERE HE (PAIANO) AND ANOTHER EMPLOYEE ANTONIO PITOSCIA WERE WORKING. PAIANO ORIGINALLY TESTIFIED THAT HE HAD NO CONVERSATION WITH HAUGHEY AND THAT PITOSCIA JUST TOLD HIM TO SIGN THE UNION CARD. PAIANO SUBSEQUENTLY STATED THAT HAUGHEY HAD SAID, WITH PITOSCIA ACTING AS INTERPRETER, "YOU SHOULD PAY ONE DOLLAR BUT I AM NOT GOING TO LET YOU PAY". PAIANO'S EVIDENCE IS THAT THIS STATEMENT WAS MADE AS HE WAS SIGNING THE UNION MEMBERSHIP CARD.
3. JERRY HAUGHEY TESTIFIED THAT PITOSCIA HAD TOLD HIM TO COME TO THE APARTMENT BUILDING WHERE HE WAS WORKING AS THERE WAS A FELLOW EMPLOYEE THERE WHOM PITOSCIA COULD HELP HAUGHEY SIGN UP IN THE UNION. HAUGHEY STATED THAT HE WENT TO THE APARTMENT BUILDING THE NEXT DAY AROUND THE LUNCH HOUR. HAUGHEY'S EVIDENCE IS THAT AT FIRST PAIANO WAS RELUCTANT TO SIGN FOR THE UNION, BUT THAT AFTER SOME DISCUSSION, WITH PITOSCIA ACTING AS INTERPRETER, PAIANO SIGNED A UNION MEMBERSHIP CARD AND PAID HAUGHEY THE ONE DOLLAR INITIATION FEE.
4. THE EVIDENCE OF PITOSCIA IS THAT WITH HIMSELF ACTING AS INTERPRETER HAUGHEY ASKED PAIANO IF HE WANTED TO JOIN THE UNION. PAIANO ASKED WHAT IT WAS ALL ABOUT AND HAUGHEY GAVE AN EXPLANATION. PITOSCIA STATED THAT HE TOLD PAIANO THAT HE (PITOSCIA) WAS IN FAVOUR OF THE UNION AND HAD JOINED IT. PITOSCIA TESTIFIED THAT HE TOLD PAIANO THAT HE HAD TO PAY A DOLLAR AND THAT PAIANO HAD REPLIED "O.K. IF I HAVE TO PAY A DOLLAR I WILL PAY A DOLLAR".

PITOSCIA'S EVIDENCE IS THAT HE SAW PAIANO SIGN A MEMBERSHIP CARD BUT THAT AT THAT POINT HE (PITOSCIA) HAD GONE OUT ON THE BALCONY OF THE APARTMENT WHERE THEY WERE LOCATED AND DID NOT ACTUALLY SEE PAIANO PAY A DOLLAR. PITOSCIA TESTIFIED THAT FROM THE BALCONY, HOWEVER, HE DID OBSERVE HAUGHEY HOLDING A MONEY BILL IN HIS HAND AND ALSO THAT HE SAW PAIANO WITH A RECEIPT IN HIS HAND.

5. IN CROSS-EXAMINATION PAIANO DENIED THAT HE HAD SAID "IF I HAVE TO PAY A DOLLAR I WILL PAY A DOLLAR". PAIANO ADMITTED, HOWEVER, THAT HAUGHEY HAD A DOLLAR IN HIS HAND. PAIANO'S EVIDENCE IS THAT HAUGHEY HAD TAKEN THE DOLLAR OUT OF HIS OWN WALLET WHEN PAIANO SIGNED THE CARD AND IT WAS THEN THAT HAUGHEY MADE THE STATEMENT THAT HE WAS NOT GOING TO LET PAIANO PAY.

6. PAIANO, HAUGHEY AND PITOSCIA TESTIFIED THAT ALL OF THE CONVERSATION BETWEEN PAIANO AND HAUGHEY WAS CARRIED ON THROUGH PITOSCIA ACTING AS INTERPRETER. IT WAS APPARENT TO THE BOARD AT THE HEARING THAT PAIANO HAD ALMOST A TOTAL LACK OF KNOWLEDGE OF THE ENGLISH LANGUAGE. IT FOLLOWS THAT HAUGHEY COULD NOT HAVE MADE THE STATEMENT ATTRIBUTED TO HIM BY PAIANO UNLESS HE HAD DONE SO THROUGH PITOSCIA. BOTH HAUGHEY AND PITOSCIA, HOWEVER, DENY THAT THE STATEMENT WAS MADE. PITOSCIA ALSO TESTIFIED THAT HE SAW A MONEY BILL IN HAUGHEY'S HAND. PAIANO MADE NO REFERENCE TO THIS FACT IN HIS ORIGINAL EXAMINATION AND ONLY ADMITTED THAT HAUGHEY HAD A DOLLAR IN HIS HAND WHEN CONFRONTED WITH THIS EVIDENCE IN CROSS-EXAMINATION. AS BETWEEN HAUGHEY'S EVIDENCE THAT PAIANO GAVE THE DOLLAR TO HIM AND PAIANO'S EXPLANATION THAT HAUGHEY TOOK THE DOLLAR OUT OF HIS OWN WALLET, THE FORMER EVIDENCE IS MORE CONSISTENT AND LOGICAL. FURTHER, EVEN IF WE ASSUME FOR PURPOSES OF ARGUMENT ONLY THAT HAUGHEY WAS PREPARED TO ACCEPT PAIANO'S CARD WITHOUT THE PAYMENT OF THE ONE DOLLAR, IN OUR OPINION, IT IS HIGHLY UNLIKELY THAT HE OR ANY UNION ORGANIZER FOR THAT MATTER WOULD ABSOLUTELY REFUSE TO ACCEPT THE PAYMENT OF THE INITIATION FEE.

7. IN THE LIGHT OF ALL THE EVIDENCE, THE BOARD IS SATISFIED THAT ANNIBALE PAIANO PAID THE ONE DOLLAR INITIATION FEE ON THE MEMBERSHIP CARD FILED WITH THE BOARD BY THE APPLICANT ON HIS BEHALF. ACCORDINGLY, THE BOARD ACCEPTS THE EVIDENCE OF MEMBERSHIP FOR ANNIBALE PAIANO.

8. BY LETTER DATED AUGUST 17TH, 1966, COUNSEL FOR THE RESPONDENT ALLEGED THAT ANOTHER NAMED EMPLOYEE OF THE RESPONDENT HAD NOT PAID THE ONE DOLLAR INITIATION FEE ON AN APPLICATION FOR MEMBERSHIP CARD. THE BOARD MADE ITS USUAL INVESTIGATION AND IS SATISFIED THAT THERE IS NO NEED TO PROCEED FURTHER WITH THIS MATTER.

11883-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. HEATH & SHERWOOD UNDERGROUND DRILLING DIVISION OF GLENGARRY FOREST PRODUCTS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT HEARING: LORNE INGLE FOR THE APPLICANT, W. S. COOK, F. G. CARROTTE AND J. J. TWA FOR THE RESPONDENT, AND ROBERT ARNOLD JAMES FOR A GROUP OF EMPLOYEES.

DECISION OF J.F.W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND
BOARD MEMBER E. BOYER: (SEPTEMBER 14, 1966).

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN DIAMOND DRILLING AT ITS TOTTEEN JOB SITE IN THE TOWNSHIP OF DRURY, ITS McLELLAN JOB SITE IN THE TOWNSHIP OF SKEAD AND ITS NORTH MINE JOB SITE IN THE TOWNSHIP OF SNIDER, ALL IN THE DISTRICT OF SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THERE WERE FILED WITH THE BOARD TWO DOCUMENTS IN OPPOSITION TO THIS APPLICATION. THE FIRST "PETITION" WAS SIGNED BY A NUMBER OF EMPLOYEES OF THE RESPONDENT, INCLUDING CERTAIN PERSONS FOR WHOM THE APPLICANT HAD FILED EVIDENCE OF MEMBERSHIP. EVIDENCE WAS GIVEN WITH RESPECT TO THIS DOCUMENT. THE SECOND DOCUMENT, VIRTUALLY IDENTICAL IN WORDING WITH THE ABOVE-MENTIONED PETITION, COULD NOT BE ACCOUNTED FOR BY THE WITNESS WHO APPEARED FOR THE OBJECTORS. HAVING REGARD TO THE EVIDENCE WHICH WAS GIVEN WITH RESPECT TO THE CIRCUMSTANCES IN WHICH THE FIRST "PETITION" CAME INTO BEING, AND THE MANNER IN WHICH IT WAS CIRCULATED, AND HAVING REGARD AS WELL TO THE NATURE OF THE TESTIMONY AND THE Demeanour OF THE WITNESS, THE BOARD IS OF OPINION THAT THE EVIDENCE DOES NOT SUFFICIENTLY WEAKEN THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT SO AS TO LEAD THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

DECISION OF BOARD MEMBER F. W. MURRAY: (SEPTEMBER 14, 1966).

I DISSENT.

THERE WAS NO EVIDENCE TO INDICATE IN ANY WAY THAT THERE HAD BEEN ANY IMPROPER CONDUCT IN THE ORIGINATION, PREPARATION OR CIRCULATION OF THE PETITION.

THERE WERE TWO POINTS IN THE EVIDENCE OF ROBERT A. JAMES ABOUT WHICH THE MOST THAT CAN BE SAID IS THAT THE INFORMATION INVOLVED WAS INCOMPLETE. THESE POINTS ARE:

1. IN CIRCULATING THE PETITION JAMES WENT FROM HOUSE TO HOUSE IN A CAR DRIVEN BY A DRIVER WHOSE NAME HE DID NOT KNOW. ON THIS POINT THE WITNESS ANSWERED SIMPLY THAT HE DID NOT HAVE A DRIVER'S LICENCE OR OWN AN AUTOMOBILE, BUT THAT HE KNEW THE DRIVER WAS NOT AN EMPLOYEE OF THE RESPONDENT.
2. A LETTER OF DESIRE, SIGNED BY ONE EMPLOYEE, WAS RECEIVED BY JAMES AND MAILED ON TO THE BOARD BY HIM, IN WHICH THE WORDING OF THE LETTER WAS VERY SIMILAR TO THE WORDING OF THE PETITION DRAFTED EARLIER BY ANOTHER EMPLOYEE AND JAMES IN THE KITCHEN OF THE LATTER'S HOME. ON THIS POINT THE WITNESS ANSWERED SIMPLY THAT HE DID NOT SEE

THE EMPLOYEE SIGN THE LETTER OF DESIRE AND THAT THE PETITION WAS MAILED FROM VAL D'OR AND RECEIVED BY HIM AT HIS HOME IN SUDBURY.

THE NATURE OR SUBJECT MATTER OF THE INFORMATION, WHICH IS BEST DESCRIBED AS INCOMPLETE, SHOULD NOT, IN MY OPINION, CAUSE THE BOARD TO GIVE NO WEIGHT TO THE PETITION, PARTICULARLY HAVING REGARD FOR THE FACT THAT THERE WAS ABSOLUTELY NO EVIDENCE TO INDICATE IMPROPER CONDUCT ON THE PART OF THE RESPONDENT OR GROUP OF EMPLOYEES.

THEREFORE, IN THIS CASE, I WOULD HAVE GIVEN WEIGHT TO THE PETITION, AND DIRECTED THAT A REPRESENTATION VOTE BE CONDUCTED.

11885-66-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U. S. A. & CANADA, LOCAL 905 (APPLICANT) V. EARLE PULLAN COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: M. LEVINSON, B. DAVIS, G. DAVIS AND T. CORRIGAN FOR THE APPLICANT, N. L. MATHEWS, Q.C., AND E. B. WASILIK FOR THE RESPONDENT, J. STADNYK FOR THE OBJECTORS.

DECISION OF J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBER
P. J. O'KEEFE: (SEPTEMBER 7, 1966).

...

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE, SALES AND DESIGN STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THERE WAS FILED WITH THE BOARD A STATEMENT OF DESIRE (HEREINAFTER REFERRED TO AS THE PETITION) EXPRESSING OPPOSITION TO THE INSTANT APPLICATION. IF THE BOARD WERE TO FIND THAT THE PETITION WEAKENED OR QUALIFIED THE EVIDENCE OF MEMBERSHIP FOR THOSE PERSONS WHOSE SIGNATURES APPEAR UPON IT, THERE WOULD REMAIN UNCONTESTED EVIDENCE OF MEMBERSHIP FOR LESS THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT. IN THESE CIRCUMSTANCES THE BOARD WOULD DIRECT THE TAKING OF A REPRESENTATION VOTE AMONG THE BARGAINING UNIT EMPLOYEES OF THE RESPONDENT RATHER THAN GRANTING OUTRIGHT CERTIFICATION TO THE APPLICANT. THE BOARD ACCORDINGLY MADE INQUIRIES WITH RESPECT TO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITION AND ALSO ENTERTAINED THE CHARGES FILED BY THE APPLICANT RELATING TO THE PETITION.

4. PAUL LOVSTED, AN EMPLOYEE OF THE RESPONDENT, TESTIFIED THAT HE PREPARED THE HEADING ON THE PETITION IN THE STOCKROOM WHERE HE WAS EMPLOYED ON THE MORNING OF JUNE 15TH, 1966 AND GAVE IT TO ANOTHER EMPLOYEE JOHN STADNYK PRIOR TO THE MORNING BREAK AT 10:00 A.M. HIS EVIDENCE IS THAT STADNYK RETURNED THE PETITION TO HIM WITH NINE SIGNATURES SUBSCRIBED ON IT PRIOR TO THE LUNCH BREAK.

ON THAT DAY. LOVSTED FURTHER TESTIFIED THAT HE SECURED MOST OF THE REMAINING TWENTY SIGNATURES ON THE PETITION IN THE LUNCH ROOM OR AT THE EMPLOYEES' PLACE OF WORK DURING THE LUNCH HOUR ON THE SAME DAY. OTHER SIGNATURES WERE SECURED WHEN EMPLOYEES CAME TO THE STOCKROOM DURING THE AFTERNOON OR AT CLOSING TIME AT 5:00 P.M. THAT DAY. HIS EVIDENCE IS THAT NO MEMBERS OF MANAGEMENT WERE PRESENT WHEN ANY OF THE SIGNATURES WERE SECURED. HE ALSO STATED THAT HE MAILED THE PETITION DURING WORKING HOURS, BUT DID NOT ASK PERMISSION TO LEAVE THE PLANT. THE PETITION WAS MAILED TO THE BOARD BY REGISTERED MAIL WITH A COVERING LETTER ON FRIDAY, JUNE 17TH, 1966. STADNYK TESTIFIED THAT LOVSTED PREPARED THE PETITION AND GAVE IT TO HIM ON THE MORNING OF JUNE 15TH. STADNYK'S EVIDENCE IS THAT HE SECURED THE FIRST NINE SIGNATURES ON THE PETITION DURING THE LUNCH BREAK THAT DAY AND ON THE SAME DAY RETURNED THE PETITION TO LOVSTED.

5. THE EVIDENCE OF EVELYN WILSON IS THAT LOVSTED CAME TO THE SPRAY SECTION OF THE PLANT JUST PRIOR TO THE LUNCH BREAK AND SOLICITED HER SIGNATURE ON THE PETITION. SHE TESTIFIED THAT LOVSTED THEREUPON WENT OVER TO THE HAIR MACHINES WHICH WERE CLOSE BY AND SPOKE TO THE FORELADY MARIA MOLTELLARO. HER EVIDENCE IS THAT SHE THEN OBSERVED MOLTELLARO SPEAKING TO THE EMPLOYEES IN THAT AREA WITH LOVSTED IN ATTENDANCE WITH THE PETITION IN HIS HAND. ANTOINETTE NUFRIO TESTIFIED THAT MOLTELLARO SPOKE TO THE GIRLS IN ITALIAN ON BEHALF OF LOVSTED IN HIS PRESENCE AND TOLD THEM THAT IF THEY WANTED TO SIGN TO DO SO BUT NO ONE WAS FORCING THEM TO SIGN. THE EVIDENCE OF MURIEL KENEHAN, AN EMPLOYEE IN THE DOLL LINE, IS THAT LOVSTED APPROACHED HER TO SIGN THE PETITION ON FRIDAY, JUNE 17TH. SHE TESTIFIED THAT LOVSTED TOLD HER THE PETITION WAS IN FAVOUR OF THE UNION. HER EVIDENCE IS THAT SHE TOLD LOVSTED THAT SHE WOULD NOT SIGN BECAUSE IF THE OFFICE GOT HOLD OF THE PETITION, PROBABLY EVERY GIRL WHOSE NAME APPEARED ON IT WOULD BE DISCHARGED. SHE SAID THAT SHE DID NOT READ THE PETITION. KENEHAN ALSO TESTIFIED THAT SHE OBSERVED LOVSTED WITH MOLTELLARO WHEN THE LATTER WAS SPEAKING TO THE GIRLS AND SAW HIM HAND A PEN TO A GIRL. MOLTELLARO COMPLETELY DENIED IN HER TESTIMONY THAT SHE HAD BEEN PRESENT WHEN LOVSTED CIRCULATED THE PETITION AMONG THE EMPLOYEES IN HER DEPARTMENT. LOVSTED DENIED THAT MOLTELLARO ACTED AS AN INTERPRETER FOR HIM AND ALSO DENIED THAT HE TOLD ANYONE THE PETITION WAS FOR THE UNION.

6. EDWARD WASILIK, THE PLANT MANAGER OF THE RESPONDENT COMPANY, TESTIFIED THAT HE FIRST LEARNED THAT THE UNION WAS MAKING AN APPLICATION FOR CERTIFICATION FROM MEMBERS OF MANAGEMENT AND OFFICE STAFF ON THE MORNING OF JUNE 13TH WHO TOLD HIM THEY HAD BEEN APPROACHED TO JOIN THE UNION. WASILIK TESTIFIED THAT HE THEREUPON PREPARED A FORM LETTER COPIES OF WHICH HE GAVE TO THE FOREMEN AND FORELADIES OF ALL OF THE DEPARTMENTS AND ASKED THEM TO CIRCULATE AMONG THE EMPLOYEES IN THEIR RESPECTIVE DEPARTMENTS. A COPY OF ONE OF THE FORM LETTERS WHICH IS DATED JUNE 14, 1966 AND SIGNED BY EVELYN WILSON AND WITNESSED BY HER FORELADY GRETAL CASSOTTI WAS FILED WITH THE BOARD AND READS AS FOLLOWS:

INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE
UNITED STATES AND CANADA,
406 BATHURST STREET,
TORONTO, ONTARIO.

DEAR SIR,

HAVING CONSIDERED THE ADVANTAGES AND DIS-
ADVANTAGES OF HAVING A UNION SHOP AT THE
EARLE PULLAN COMPANY LIMITED, I HAVE
DECIDED THAT I DO NOT WISH ANY ASSOCIATION
WITH A UNION. I AM HAPPY WITH MY PRESENT
EMPLOYMENT AND AM SIGNING THIS DOCUMENT
WITHOUT ANY INSISTANCE OR PRESSURE ON THE
PART OF MANAGEMENT. MY SIGNATURE IS LISTED
BELOW INDICATING MY REJECTION OF A UNION
PROGRAM AND I HAVE SIGNED OF MY OWN FREE
WILL AND VOLITION.

SIGNATURE _____ DATE _____ CLOCK NUMBER _____
WITNESS _____

WASILIK'S EVIDENCE IS THAT ALL OF THE SIGNATURES ON THE FORM LETTERS WERE SECURED ON MONDAY, JUNE 13TH AND IN THE FORENOON ON TUESDAY, JUNE 14TH. THE FOREMEN AND FORELADIES RETURNED THE SIGNED FORMS TO HIS OFFICE. HE FURTHER TESTIFIED THAT HE RECEIVED FORMAL NOTICE FROM THE BOARD OF THE UNION'S APPLICATION IN THE EARLY AFTERNOON OF JUNE 14TH, AND THAT NOTICE TO THE EMPLOYEES OF THE APPLICATION WAS POSTED IN THE PLANT THE SAME DAY. WASILIK STATED THAT UPON RECEIVING NOTICE OF THE APPLICATION HE COMMUNICATED WITH THE RESPONDENT'S SOLICITORS AND UPON THEIR ADVICE HE CALLED A MEETING AND INSTRUCTED THE MANAGEMENT PERSONNEL OF THE COMPANY TO HAVE NO FURTHER COMMUNICATIONS WITH THE EMPLOYEES CONCERNING THE UNION.

7. GRETAL CASSOTTI, A FORELADY IN THE SPRAY AND PAINT DEPARTMENT, TESTIFIED THAT WASILIK GAVE HER COPIES OF THE FORM LETTER ON THE MORNING OF JUNE 13TH AND TOLD HER TO GET THE GIRLS IN HER DEPARTMENT TO READ IT AND SIGN IT IF THEY WANTED TO DO SO. CASSOTTI'S EVIDENCE IS THAT ALL OF THE GIRLS IN HER DEPARTMENT SIGNED THE LETTER AND THAT SHE RETURNED THE EXECUTED COPIES TO WASILIK'S OFFICE. ANNA MARIA DALCIN, A FORELADY, TESTIFIED THAT WHEN WASILIK GAVE THE FORM LETTERS TO HER ALL HE SAID WAS THAT THEY WERE FOR THE WORKERS. HER EVIDENCE IS THAT SHE JUST GAVE THE LETTERS TO THE GIRLS IN HER DEPARTMENT AND TOLD THEM WHAT IT WAS. SHE SAID SHE BROUGHT NO PRESSURE TO BEAR ON ANY OF THE GIRLS TO SIGN AND THAT SOME SIGNED AND OTHERS DID NOT SIGN THE LETTER. SHE TESTIFIED THAT SHE COLLECTED THE SIGNED COPIES AND PLACED THEM ON A TABLE IN WASILIK'S OFFICE.

8. EVELYN WILSON TESTIFIED THAT HER FORELADY GRETAL CASSOTTI GAVE HER A COPY OF THE FORM LETTER ON THE MORNING OF JUNE 14TH AND TOLD HER THAT EVERYONE ELSE IN THE DEPARTMENT HAD SIGNED THE LETTER. WILSON SAID SHE SIGNED THE LETTER AND CASSOTTI WITNESSED HER SIGNATURE. MURIEL KENEHAN TESTIFIED THAT HER FORELADY ANNA MARIA DALCIN ASKED HER TO SIGN THE FORM LETTER ON THE MORNING OF JUNE 14TH. KENEHAN'S EVIDENCE IS THAT WHEN SHE REFUSED TO SIGN DALCIN TOLD HER THAT EVERYONE ELSE HAD SIGNED AND ASKED HER WHY SHE WOULD NOT SIGN. KENEHAN FURTHER TESTIFIED THAT DALCIN APPROACHED HER TWICE MORE DURING THE SAME MORNING TO GET HER TO SIGN AND EVEN ASKED KENEHAN IF SHE WANTED TO GO TO WASILIK'S OFFICE AND SPEAK TO HIM ABOUT IT. ANTOINETTE NUFRIO'S EVIDENCE IS THAT DALCIN ALSO ASKED HER TO SIGN THE LETTER ON THE MORNING OF

JUNE 14TH AND TOLD HER THAT EVERYONE ELSE HAD SIGNED AND THAT SHE WAS THE ONLY ONE LEFT. AT NOON THAT DAY NUFRIO TELEPHONED HER HUSBAND FOR ADVICE AND ON THAT OCCASION DALCIN SPOKE TO NUFRIO'S HUSBAND AND TOLD HIM THAT HIS WIFE WAS THE ONLY EMPLOYEE WHO HAD NOT SIGNED THE LETTER. ON THE ADVICE OF HER HUSBAND, NUFRIO SAID SHE SIGNED ONE OF THE FORM LETTERS. DALCIN TESTIFIED THAT WHILE SHE GAVE BOTH KENEHAN AND NUFRIO A COPY OF THE LETTER SHE DID NOT ASK THEM TO SIGN. DALCIN ALSO DENIED BOTH THAT SHE APPROACHED KENEHAN TO SIGN THE LETTER ON THREE OCCASIONS AND THAT SHE SPOKE TO NUFRIO'S HUSBAND ON THE TELEPHONE.

9. AS IS APPARENT FROM THE ABOVE OUTLINE OF THE EVIDENCE THERE ARE GLARING CONFLICTS BETWEEN THE EVIDENCE OF THE EMPLOYEES KENEHAN AND NUFRIO ON THE ONE HAND AND THE EVIDENCE OF THE FORELADY DALCIN ON THE OTHER CONCERNING THE SECURING OF SIGNATURES ON THE FORM LETTERS PREPARED BY WASILIK. WE HAVE NO HESITATION, HOWEVER, IN ACCEPTING THE EVIDENCE OF THE TWO EMPLOYEES OVER THAT OF DALCIN. HAVING REGARD TO THE DEMEANOUR OF DALCIN AS A WITNESS AND THE OBVIOUS LACK OF CANDOUR AS REVEALED BY HER EVIDENCE, WE DID NOT FIND HER TO BE A CREDIBLE WITNESS. THERE ARE ALSO SERIOUS CONFLICTS BETWEEN THE EVIDENCE OF LOVSTED AND THE FORELADY MOLTELLARO AND THAT OF THE EMPLOYEES WILSON, KENEHAN AND NUFRIO AS TO THE TIME, PLACE AND CIRCUMSTANCES UNDER WHICH SIGNATURES WERE SECURED ON THE PETITION. WE PREFER THE EVIDENCE OF THE EMPLOYEES OVER THAT OF LOVSTED AND MOLTELLARO.

10. IT IS APPARENT FROM THE EVIDENCE THAT WHEN WASILIK LEARNED OF THE IMMINENT APPLICATION FOR CERTIFICATION BY THE UNION ON THE MORNING OF JUNE 13TH, HE IMMEDIATELY ENLISTED THE ASSISTANCE OF THE ENTIRE MANAGEMENT STAFF IN AN EFFORT TO THWART THE APPLICATION. FURTHER, BY HAVING THE FOREMEN AND FORELADIES OF EACH DEPARTMENT SOLICIT THE SIGNATURES OF THE EMPLOYEES IN THEIR RESPECTIVE DEPARTMENTS ON THE FORM LETTERS, THE EMPLOYEES COULD NOT HELP BUT BECOME ACUTELY AWARE, NOT ONLY THAT THE RESPONDENT WAS OPPOSED TO THE UNION, BUT THAT IT WAS DETERMINED TO DEFEAT IT. IN EFFECT, WASILIK, WITH OBVIOUS INTENT, PLACED THE EMPLOYEES IN THE INVIDIOUS POSITION OF DECLARING THEMSELVES OPENLY FOR OR AGAINST THE UNION. WE WOULD ADD THAT THE EVIDENCE LEADS US TO CONCLUDE THAT PRESSURE WAS IN FACT BROUGHT TO BEAR ON EMPLOYEES WHO SHOWED A RELUCTANCE TO SIGN THE FORM LETTER.

11. ON THE HEELS OF THE CIRCULATION OF THE FORM LETTERS BY MANAGEMENT, LOVSTED AND STADNYK PROCEEDED TO SOLICIT SIGNATURES ON THE PETITION. ON THE EVIDENCE WE FIND THAT THEY CIRCULATED THE PETITION IN THE PLANT, DURING WORKING HOURS, IN THE PRESENCE OF MEMBERS OF MANAGEMENT, AND IN ONE INSTANCE LOVSTED ENLISTED THE AID OF A FORELADY IN SECURING SIGNATURES ON THE PETITION. TAKING THE BLITZ EFFORT MADE BY MANAGEMENT TO CAUSE THE EMPLOYEES TO SEVER ANY SUPPORT THEY MIGHT HAVE GIVEN TO THE APPLICANT UNION, TOGETHER WITH THE FLAGRANT MANNER IN WHICH THE PETITION ITSELF WAS CIRCULATED, WE DO NOT ACCEPT THE PETITION AS REPRESENTING A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHO SUBSCRIBED THEIR SIGNATURES TO IT. WE COMPLETELY REJECT THE ARGUMENT OF COUNSEL FOR THE RESPONDENT THAT BECAUSE THE ACTION OF MANAGEMENT IN CIRCULATING THE FORM LETTERS WAS DONE PRIOR TO THE POSTING OF THE NOTICE TO THE EMPLOYEES THAT CONDUCT CANNOT BE VISITED ON THE PETITION. WE THEREFORE FIND THAT THE PETITION DOES NOT WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS MATTER.

12. AT THE CONCLUSION OF THE HEARING OF THE INSTANT APPLICATION ON JUNE 30TH DURING WHICH THE BOARD INQUIRED INTO THE PETITION AND ENTERTAINED THE CHARGES RELATING TO THE PETITION FILED BY THE APPLICANT, COUNSEL FOR THE RESPONDENT ALLEGED THAT ONE OF THE PERSONS FOR WHOM THE APPLICANT HAD SUBMITTED EVIDENCE OF MEMBERSHIP HAD NOT IN FACT PAID THE REQUIRED ONE DOLLAR INITIATION FEE. IN SUPPORT OF HIS ALLEGATION COUNSEL FILED A LETTER DATED JUNE 14TH, 1966 PURPORTEDLY SIGNED BY NICOLA QUERCIA AND WITNESSED BY E. B. WASILIK, WHICH READS AS FOLLOWS:

INTERNATIONAL UNION OF DOLL & TOY WORKERS
OF THE UNITED STATES AND CANADA,
406 BATHURST STREET,
TORONTO, ONTARIO.

ATTENTION: MR. DAVIS

DEAR MR. DAVIS

PLEASE BE ADVISED THAT I HAVE AT NO TIME PAID
\$1.00 OR FOR THAT MATTER ANY MONEY TO YOU OR THE
UNION YOU REPRESENT.

THE RECEIPT YOU LEFT WITH ME THEREFORE IS MISLEADING
AS I HAVE NOT AND DO NOT INTEND TO PAY ANY MONEY TO
YOUR ORGANIZATION.

A TEMPORARY RECEIPT INDICATING THE PAYMENT OF A \$1.00 INITIATION FEE BY NICOLA QUERCIA, SIGNED BY GIL DAVIS AS COLLECTOR, WAS STAPLED TO THE LETTER.

13. THE BOARD MADE ITS OWN INVESTIGATION WITH REGARD TO THE ALLEGATION AND LISTED THE MATTER FOR HEARING ON AUGUST 16TH, 1966.

14. NICOLA QUERCIA WHO IS A FOREMAN IN THE EMPLOY OF THE RESPONDENT TESTIFIED THAT HE WAS APPROACHED BY GILBERT DAVIS AND THOMAS CORRIGAN, BOTH OF WHOM ARE SALARIED BUSINESS AGENTS OF THE APPLICANT TRADE UNION, ON THE MORNING OF JUNE 11TH OUTSIDE OF HIS HOME AND WAS ASKED BY THEM TO JOIN THE UNION. QUERCIA SAID THAT HE EXPRESSED SOME DOUBTS ABOUT JOINING THE UNION BECAUSE HE WAS A FOREMAN BUT ADMITTED THAT HE SIGNED THE APPLICATION FOR MEMBERSHIP CARD FILED WITH THE BOARD BY THE APPLICANT. HE IDENTIFIED BOTH HIS SIGNATURE ON THE APPLICATION PORTION OF THE CARD AND HIS SIGNATURE CONFIRMING THE PAYMENT OF THE INITIATION FEE. HE ALSO ADMITTED THAT HE RECEIVED A RECEIPT FROM DAVIS INDICATING THE PAYMENT OF A \$1.00 INITIATION FEE WHICH IS ATTACHED TO THE LETTER QUOTED IN PARAGRAPH 12. QUERCIA, HOWEVER, DENIED THAT HE MADE A \$1.00 PAYMENT. THE EVIDENCE OF HIS WIFE JOSEPPINE GIVES SOME CORROBORATION TO HIS TESTIMONY. ON THE OTHER HAND, BOTH DAVIS AND CORRIGAN TESTIFIED THAT NOT ONLY DID QUERCIA PAY THE INITIATION FEE BUT HE ALSO EXPRESSED WARM SUPPORT FOR THE UNION AND EVEN DIRECTED THEM TO ANOTHER EMPLOYEE WHOM QUERCIA SAID WOULD BE WILLING TO JOIN THE UNION.

15. ACCORDING TO QUERCIA, ALTHOUGH HIS EVIDENCE IS NOT ENTIRELY CLEAR, IT APPEARS THAT ON HIS OWN INITIATIVE HE WENT TO WASILIK ON MONDAY MORNING, JUNE 13TH AND TOLD HIM THAT HE HAD SIGNED A UNION MEMBERSHIP CARD BUT HAD NOT PAID THE \$1.00 INITIATION FEE. QUERCIA TESTIFIED THAT HE LEFT THE RECEIPT HE

HAD RECEIVED WITH WASILIK. IT ALSO APPEARS THAT THE NEXT DAY HE WAS CALLED TO WASILIK'S OFFICE AND SIGNED THE LETTER ADDRESSED TO MR. DAVIS QUOTED IN PARAGRAPH 12. IN DETERMINING WHAT EVIDENCE TO ACCEPT IN THIS MATTER, THE BOARD HAS TAKEN INTO ACCOUNT THE EVIDENCE OF ALL THE SURROUNDING CIRCUMSTANCES. QUERCIA'S EVIDENCE IS THAT HE WENT TO WASILIK'S OFFICE ON THE MORNING OF JUNE 13TH AT ABOUT 11:00 A.M. ON SOME OTHER BUSINESS. HAVING REGARD TO WASILIK'S EVIDENCE RELATING TO THE PETITION, THIS WOULD BE AFTER HE HAD LEARNED OF THE PENDING UNION APPLICATION FOR CERTIFICATION AND AFTER HE HAD PREPARED THE FORM LETTER WHICH HE INSTRUCTED THE FOREMEN AND FORELADIES TO CIRCULATE IN THEIR DEPARTMENTS. WHILE QUERCIA DID NOT STATE IN HIS TESTIMONY ON WHAT "BUSINESS" HE HAD GONE TO WASILIK'S OFFICE IT IS REASONABLE TO INFER THAT HE WAS SUMMONED BY WASILIK TO GET COPIES OF THE FORM LETTER. QUERCIA UNDOUBTEDLY IMMEDIATELY MUST HAVE BECOME AWARE OF WASILIK'S HOSTILE ATTITUDE TOWARD THE UNION AND UNDERSTANDABLY, AS AN EMPLOYEE OF NINE YEARS' STANDING, WOULD FEEL SOME TREPIDATION CONCERNING HIS JOB, KNOWING THAT AS A FOREMAN HE HAD SIGNED A UNION MEMBERSHIP CARD. IN OUR VIEW, THERE WAS MOTIVATION FOR QUERCIA TO CONFESS THIS FACT AS IT WOULD BE REASONABLE FOR HIM TO BE APPREHENSIVE THAT THE SIGNING OF A UNION MEMBERSHIP CARD MIGHT IN SOME MANNER COME TO THE ATTENTION OF WASILIK. IT WOULD ALSO BE REASONABLE FOR QUERCIA TO DENY THE PAYMENT OF THE INITIATION FEE IN AN EFFORT TO MOLLIFY WASILIK. ON THE OTHER HAND, THE EVIDENCE OF BRUCE DAVIS AND GILBERT DAVIS IS THAT ON SUNDAY, JUNE 12TH WHEN THE DECISION WAS MADE TO FILE THE INSTANT APPLICATION FOR CERTIFICATION, THE APPLICANT HAD EVIDENCE OF MEMBERSHIP FOR APPROXIMATELY SEVENTY-FIVE PER CENT OF THE BARGAINING UNIT EMPLOYEES. IN OTHER WORDS, GILBERT DAVIS HAD NOTHING TO GAIN BY FILING WITH THE BOARD A MEMBERSHIP CARD UPON WHICH HE KNEW THE INITIATION FEE HAD NOT BEEN PAID.

16. ACCORDINGLY, THE BOARD FINDS THAT THE EVIDENCE SUPPORTS A FINDING THAT THE \$1.00 INITIATION FEE WAS PAID BY NICOLA QUERCIA ON THE APPLICATION FOR MEMBERSHIP CARD FILED WITH THE BOARD BY THE APPLICANT ON HIS BEHALF.

DECISION OF BOARD MEMBER H. F. IRWIN: (SEPTEMBER 7, 1966).

NICOLA QUERCIA TESTIFIED THAT HE DID NOT PAY A DOLLAR INITIATION FEE WHEN HE SIGNED AN APPLICATION FOR MEMBERSHIP CARD IN THE APPLICANT UNION AND THE EVIDENCE OF HIS WIFE JOSEPPINE LENDS SOME CORROBORATION TO HIS TESTIMONY. ON THE OTHER HAND, THE EVIDENCE OF GILBERT DAVIS AND THOMAS CORRIGAN IS THAT QUERCIA DID PAY A DOLLAR INITIATION FEE. HAVING REGARD TO THE COMPLETE CONFLICT IN THE TESTIMONY, IN MY OPINION, THIS MATTER SHOULD BE RESOLVED BY THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE. ACCORDINGLY, I WOULD HAVE DIRECTED THE TAKING OF SUCH A VOTE.

12064-66-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 131
(APPLICANT) V. P. F. COLLIER & SON LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND
BOARD MEMBER E. BOYER: (SEPTEMBER 22, 1966).

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES THE BOARD FURTHER FINDS THAT ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT OFFICE MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT OFFICE MANAGER, SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER THE BOARD DECLARES THAT FRANK ANDERSON DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS AN EMPLOYEE OF THE RESPONDENT WITHIN THE MEANING OF THE ACT.

5. IT APPEARS FROM THE EVIDENCE THAT THE RESPONDENT OPERATES OUT OF TWO LOCATIONS AT METROPOLITAN TORONTO, ONE AT 55 YORK STREET AND THE OTHER AT 119 PEARL STREET. AT THE PEARL STREET ADDRESS THE RESPONDENT OPERATES A WAREHOUSE WHERE FRANK ANDERSON IS THE ONLY FULL TIME PERSON EMPLOYED BY THE RESPONDENT. HIS CLASSIFICATION IS THAT OF WAREHOUSE MANAGER. SINCE MR. ANDERSON IS THE ONLY PERSON REGULARLY EMPLOYED AT THE WAREHOUSE HE HAS A GREAT MANY FUNCTIONS AND PERFORMS ALL THE WORK REQUIRED AT THE WAREHOUSE. WHILE WE HAVE DECLARED THAT HIS FUNCTIONS ARE NOT MANAGERIAL THEY ARE, HOWEVER, NOT FUNCTIONS USUALLY PERFORMED BY A PERSON IN A BARGAINING UNIT DESCRIBED AS "ALL OFFICE AND CLERICAL EMPLOYEES". FOR THE REASONS STATED IN THE H. GRAY LIMITED CASE, CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-1959, ¶16,011, IT IS THE BOARD'S USUAL PRACTICE TO PLACE OFFICE EMPLOYEES IN A BARGAINING UNIT SEPARATE AND APART FROM OTHER EMPLOYEES SAVE IN THE MOST EXCEPTIONAL CIRCUMSTANCES. ONE OF THE EXCEPTIONAL CIRCUMSTANCES WHICH HAS CAUSED THE BOARD TO DEPART FROM ITS USUAL PRACTICE IS THE INSTANCE WHERE THERE IS ONLY ONE EMPLOYEE EMPLOYED IN AN OFFICE WHO WOULD BE ELIGIBLE FOR COLLECTIVE BARGAINING AND WHO IS CLAIMED BY THE APPLICANT UNION AS A MEMBER. IN SUCH A CASE, THE BOARD HAS INCLUDED SUCH AN OFFICE EMPLOYEE IN THE SAME BARGAINING UNIT AS OTHER EMPLOYEES BECAUSE THE SOLE OFFICE EMPLOYEE WOULD OTHERWISE BE DEPRIVED OF THE RIGHT TO COLLECTIVE BARGAINING WHICH HE HAS INDICATED HE DESIRES.

6. IN THE INSTANT CASE, HOWEVER, WHILE MR. ANDERSON IS THE ONLY OTHER EMPLOYEE APART FROM THE OFFICE EMPLOYEES, HE IS NOT CLAIMED BY THE APPLICANT AS A MEMBER AND THEREFORE, IN OUR OPINION, WOULD NOT CONSTITUTE ONE OF THE EXCEPTIONAL CIRCUMSTANCES REFERRED TO BY THE BOARD IN THE H. GRAY LIMITED CASE. THE BOARD, THEREFORE, FINDS THAT IT WOULD NOT BE APPROPRIATE TO INCLUDE MR. ANDERSON IN THE OFFICE AND CLERICAL BARGAINING UNIT IN THIS CASE.

7. HAVING FURTHER REGARD TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT THE BOARD FINDS THAT LELA MURBY PERFORMS WORK SIMILAR TO PERSONS INCLUDED IN THE BARGAINING UNIT FOR THE GREATER PROPORTION OF HER WORK DAY. WHILE LELA MURBY HAS SOME SUPERVISORY FUNCTIONS AND THE RIGHT TO MAKE CERTAIN RECOMMENDATIONS WE FIND THAT HER SUPERVISORY FUNCTIONS ARE MINOR AND INCIDENTAL TO HER MAIN FUNCTION AS A CLERK. SHE HAS NO INDEPENDENT DISCRETIONARY POWER TO MATERIALLY AFFECT THE EMPLOYMENT RELATIONSHIP OF THE RESPONDENT'S EMPLOYEES BUT HAS ONLY THE RIGHT TO MAKE RECOMMENDATIONS WHICH MAY OR MAY NOT BE FOLLOWED. IN ITS DECISION DATED SEPTEMBER 14TH, 1966 IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, BOARD FILE NO. 10775-65-9, THE BOARD STATED AS FOLLOWS:

WHILE THE CASES CITED ABOVE WOULD SEEM TO INDICATE THAT WHILE A PERSON MAY HAVE MINOR SUPERVISORY FUNCTIONS OR VERY LIMITED CONFIDENTIAL FUNCTIONS IN MATTERS RELATING TO LABOUR RELATIONS, IF SUCH FUNCTIONS ARE MERELY INCIDENTAL TO THEIR MAIN FUNCTION AND ARE OF SUCH A NATURE THAT THEY CANNOT BE SAID TO MATERIALLY EFFECT THE EMPLOYMENT RELATIONSHIP OF THE RESPONDENT'S EMPLOYEES, SUCH PERSONS SHOULD NOT BE EXCLUDED FROM COLLECTIVE BARGAINING BY REASON OF SECTION 1(3)(B) OF THE ACT. UNLESS A PERSON WHO REGULARLY PERFORMS WORK SIMILAR TO PERSONS IN A BARGAINING UNIT HAS INDEPENDENT DISCRETIONARY POWERS RATHER THAN MERELY INCIDENTAL REPORTING FUNCTIONS WHICH ARE SUBJECT TO THE DISCRETION AND AUTHORITY OF HIGHER PERSONS IN MANAGEMENT, THERE IS NO REASON TO EXCLUDE SUCH A PERSON FROM COLLECTIVE BARGAINING.

8. HAVING REGARD TO THE FINDINGS AS SET OUT ABOVE, THE BOARD THEREFORE DECLARES THAT LELA MURBY DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

9. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT VIVIAN MASON IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

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DECISION OF BOARD MEMBER H. F. IRWIN: (SEPTEMBER 22, 1966).

I DISSENT FROM THAT PORTION OF THE MAJORITY DECISION WHEREIN LELA MURBY IS FOUND NOT TO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS INCLUDED IN THE BARGAINING UNIT. ON THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER I FIND THAT SHE DOES EXERCISE MANAGERIAL FUNCTIONS AND SHOULD BE EXCLUDED FROM THE BARGAINING UNIT.

12073-66-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. XAVIER GENEUREUX (RESPONDENT).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT HEARING: ALBERT LALONDE AND CHAS. CARON FOR THE APPLICANT, AND WARREN K. WINKLER AND EDWARD HOREMBALA FOR THE RESPONDENT.

DECISION OF THE BOARD: (SEPTEMBER 2, 1966).

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4. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT HIS PLANING MILL AT MATHESON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF

FOREMAN, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE RESPONDENT ALLEGED THAT THE APPLICANT USED INTIMIDATION AND COERCION TO COMPEL EMPLOYEES OF THE RESPONDENT TO BECOME MEMBERS OF THE APPLICANT CONTRARY TO SECTIONS 52 AND 53 OF THE LABOUR RELATIONS ACT.

6. THE EVIDENCE CLEARLY ESTABLISHES THAT CHARLES CARON, FINANCIAL SECRETARY AND BUSINESS REPRESENTATIVE OF THE APPLICANT, TOGETHER WITH OTHER MEMBERS OF THE APPLICANT UNION WHO WERE NOT EMPLOYEES OF THE RESPONDENT, BLOCKADED THE ENTRANCE TO THE RESPONDENT'S PLANING MILL AND KEPT EMPLOYEES OF THE RESPONDENT FROM REPORTING IN TO WORK UNTIL THEY SIGNED MEMBERSHIP CARDS IN THE APPLICANT UNION.

7. THE BOARD FINDS THAT THE CONDUCT OF CHARLES CARON AND THE OTHER MEMBERS OF THE APPLICANT, REFERRED TO ABOVE, CONSTITUTES A VIOLATION OF SECTION 52 OF THE LABOUR RELATIONS ACT.

8. IN VIEW OF THE FINDING SET OUT IN PARAGRAPH 5 HEREOF, THE BOARD IS UNABLE TO ACCEPT AS SATISFACTORY PROOF OF MEMBERSHIP ANY OF THE DOCUMENTARY EVIDENCE FILED BY THE APPLICANT, AND THE APPLICATION IS HEREBY DISMISSED.

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12076-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)
V. PAUL GIRARD CO. LTD. (RESPONDENT).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (SEPTEMBER 2, 1966).

1. BY APPLICATION DATED AUGUST 2ND, 1966 THE APPLICANT APPLIED FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP FOR 12 PERSONS WHOM IT CLAIMED WERE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE OF APPLICATION. THE APPLICANT ALSO FILED A FORM 60, DECLARATION CONCERNING MEMBERSHIP DOCUMENT CONSTRUCTION INDUSTRY, IN WHICH THE APPLICANT DECLARED THAT THERE WERE 14 PERSONS WHO WERE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. NO REPLY WAS FILED BY THE RESPONDENT BY THE TERMINAL DATE, AUGUST 10TH, 1966. IN ITS DECISION OF AUGUST 11TH, 1966, THE BOARD FOUND THE UNIT OF EMPLOYEES SOUGHT BY THE APPLICANT WAS APPROPRIATE FOR COLLECTIVE BARGAINING AND WAS SATISFIED ON THE BASIS OF THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT. A CERTIFICATE, DATED AUGUST 11TH, 1966, ACCORDINGLY ISSUED TO THE APPLICANT.

2. BY LETTERS DATED AUGUST 12TH AND 22ND, THE SOLICITORS FOR THE RESPONDENT REQUESTED THAT THE BOARD ACCEPT THE LATE FILING OF THE RESPONDENT'S REPLY BECAUSE OF THE SPECIAL CIRCUMSTANCES WHICH WERE SET OUT IN ITS LETTERS. BY LETTER DATED AUGUST 25TH, 1966 THE REGISTRAR ADVISED THE APPLICANT THAT ON THE BASIS OF THE REPRESENTATIONS OF THE RESPONDENT THE BOARD HAD DECIDED TO PERMIT

THE LATE FILING OF THE RESPONDENT'S REPLY. A COPY OF THE CORRESPONDENCE OF THE SOLICITORS FOR THE RESPONDENT, THE REPLY AND SCHEDULE A FILED BY THE RESPONDENT WERE ENCLOSED WITH THE REGISTRAR'S LETTER. THE REGISTRAR PARTICULARLY DREW TO THE ATTENTION OF THE APPLICANT THAT THE SCHEDULE A CONTAINED THE NAMES OF 17 PERSONS WHOM THE RESPONDENT CLAIMED WERE IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE BY THE BOARD ON THE DATE OF APPLICATION. IT WAS FURTHER POINTED OUT TO THE APPLICANT THAT OF THE 12 PERSONS FOR WHOM THE APPLICANT SUBMITTED EVIDENCE OF MEMBERSHIP THE NAMES OF ONLY FOUR APPEAR ON THE SCHEDULE.

3. THE APPLICANT WAS DIRECTED BY THE REGISTRAR TO INFORM THE BOARD BY SEPTEMBER 1ST, 1966 WHETHER OR NOT IT WAS CHALLENGING THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. THE BOARD HAS RECEIVED NO COMMUNICATION FROM THE APPLICANT AS OF THIS DATE.

4. IN THESE CIRCUMSTANCES, AND ON THE BASIS OF ALL THE EVIDENCE BEFORE IT, THE BOARD IS SATISFIED THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

5. THE BOARD, ACCORDINGLY, REVOKES ITS CERTIFICATE OF AUGUST 11TH, 1966, AND DISMISSES THE APPLICATION.

12081-66-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SENECA WIRE OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: M. LEVINSON AND W. TILLER FOR THE APPLICANT, T. F. STORIE AND D. E. DORWART FOR THE RESPONDENT, JOHN PLOWMAN FOR THE OBJECTORS.

DECISION OF THE BOARD: (SEPTEMBER 9, 1966).

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT RICHMOND HILL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THERE WAS FILED IN THIS MATTER A DOCUMENT SIGNED BY EMPLOYEES OF THE RESPONDENT IN OPPOSITION TO THIS APPLICATION. THIS PETITION WAS TYPED BY THE SECRETARY OF THE RESPONDENT'S PLANT MANAGER WITH THE KNOWLEDGE OF THE RESPONDENT AT THE REQUEST OF AN EMPLOYEE. ON THE DATE THIS APPLICATION WAS MADE, THE RESPONDENT'S PLANT MANAGER HAVING BEEN ADVISED OF THE APPLICANT'S ATTEMPTS TO ORGANIZE

THE RESPONDENT'S EMPLOYEES CALLED A MEETING OF THE EMPLOYEES DURING WORKING HOURS ON THE RESPONDENT'S PREMISES. THE RESPONDENT'S MANAGER READ A LETTER TO THE EMPLOYEES A COPY OF WHICH WAS RECEIVED BY THE EMPLOYEES THROUGH THE MAIL THE FOLLOWING DAY WHICH LETTER DISCLOSED THE RESPONDENT'S OPPOSITION TO THE APPLICANT'S ATTEMPTS TO ORGANIZE THE EMPLOYEES.

4. THE LETTER READS AS FOLLOWS:

DEAR FELLOW EMPLOYEE:

IT HAS COME TO MY ATTENTION THAT THE UNION REPRESENTATIVES ARE AGAIN ACTIVE IN THE RICHMOND HILL AREA. I UNDERSTAND THAT SOME OF YOU HAVE BEEN APPROACHED BY THESE MEN AND PROBABLY THOSE OF YOU WHO HAVE NOT, SOON WILL BE. AS YOUR EMPLOYER, WE FEEL THAT IT IS ONLY FAIR THAT YOU SHOULD KNOW WHERE YOUR COMPANY STANDS WITH REFERENCE TO UNION ORGANIZATION.

YOUR COMPANY RECOGNIZES THAT EACH OF YOU HAS A RIGHT UNDER THE LAW TO BELONG TO A UNION IF YOU WISH. THE SAME LAW SAYS THAT YOU DO NOT HAVE TO BELONG TO A UNION IF YOU DO NOT WANT TO. YOUR COMPANY HAS HAD A LOT OF EXPERIENCE IN DEALING WITH UNIONS IN THE UNITED STATES, SO WE KNOW SOMETHING ABOUT WHAT HAPPENS WHEN EMPLOYEES DECIDE THEY WANT UNION REPRESENTATION. WITH THIS IN MIND WE BELIEVE THAT BOTH YOU AND THE COMPANY WILL BE BETTER OFF -- BOTH FINANCIALLY AND IN EVERY OTHER WAY IF WE CONTINUE TO WORK TOGETHER TO SETTLE ANY PROBLEMS WE MAY HAVE WITHOUT BEING HINDERED BY UNION RULES, RESTRICTIONS AND OFFICERS WHO MAY NOT UNDERSTAND US OR OUR PROBLEMS. WE FEEL THAT YOU WILL BE BETTER OFF IF YOU COME AND DISCUSS YOUR PROBLEMS DIRECTLY WITH US RATHER THAN GOING TO A LOCAL UNION REPRESENTATIVE AND TELLING HIM ABOUT A PARTICULAR PROBLEM AND THEN HE TALKING TO LOCAL MANAGEMENT AND THEN THAT SAME MANAGEMENT GOING TO THE HIGHER UPS IN THE UNITED STATES AND CLEARING IT WITH THEM, AND THEN BACK THROUGH THAT SAME LONG CHAIN TO YOU. WE HAVE ALWAYS TRIED TO OPERATE THIS PLANT WITH THE IDEA IN MIND THAT YOUR FUTURE AND THE FUTURE OF SENECA WIRE ARE VERY CLOSELY RELATED. IF WE ARE SUCCESSFUL THEN WE WANT YOU TO BE SUCCESSFUL. YOUR PRESENT WAGES, HOURS, FRINGE BENEFITS, AND WORKING CONDITIONS ARE THE EQUAL TO THOSE ELSEWHERE IN THE COMMUNITY AND ARE ABOVE THOSE PAID ELSEWHERE IN OUR INDUSTRY. THEY ARE WELL ABOVE THOSE PAID OUR PLANT IN THE UNITED STATES. YOU DID NOT NEED UNION HELP TO GET THESE THINGS.

PROBABLY ONLY A FEW OF YOU KNOW WHAT HAS HAPPENED TO MANY COMPANIES IN OUR INDUSTRY IN RECENT YEARS.

AMERICAN WIRE FABRICS COMPANY, IN PENNSYLVANIA; CYCLONE IN ILLINOIS; ROEBLING IN NEW JERSEY; WICKWIRE BROS. IN NEW YORK; REYNOLDS IN ILLINOIS; CLARK IN TEXAS; SOME OF THE BIGGEST PRODUCTERS IN THE UNITED STATES HAVE CLOSED THEIR PLANTS AND LEFT ALL OF THEIR EMPLOYEES OUT OF WORK. ONE OF THE MAIN REASONS WE HAVE JOBS FOR YOU PEOPLE TODAY IS BECAUSE B. GREENING COMPANY IN HAMILTON WAS FORCED TO GIVE UP AND SELL THEIR BUSINESS TO US. EACH OF THESE COMPANIES TRIED AND FAILED TO WORK UNDER A UNION CONTRACT. OUR OWN PLANT IN YORK, PENNSYLVANIA WAS FORCED TO CLOSE AND MOVE TO MISSISSIPPI.

UNION ORGANIZERS WILL PROBABLY TELL YOU THAT THERE IS NO HARM IN SIGNING A UNION AUTHORIZATION CARD BECAUSE IT IS ONLY A WAY OF LETTING ALL EMPLOYEES VOTE ON WHETHER THEY WANT A UNION OR NOT. IF YOU FEEL A UNION IS NOT NECESSARY OR DESIRABLE, IF YOU DON'T WANT TO RISK A CHANGE IN OUR PRESENT HAPPY RELATIONS, THEN MY ADVICE IS DO NOT SIGN A CARD. YOUR REFUSAL TO SIGN WILL AMOUNT TO A VOTE JUST AS DEMOCRATIC AND JUST AS EFFECTIVE AS ANY OTHER KIND OF VOTE IN FAVOUR OF THE PROPOSITION THAT YOU AND I CAN SOLVE OUR PROBLEMS AND SHARE OUR FUTURE SUCCESS WITHOUT ANY HELP FROM ANY UNION.

THIS PLANT HAS HAD A ROUGH START IN THE PAST THREE YEARS. WE HAVE JUST CLOSED ANOTHER FISCAL YEAR WHICH SHOWS WE HAVE AGAIN LOST MONEY OVER THE PAST TWELVE MONTHS. WE HAVE NOT MADE A CENT IN CANADA AND YET THERE ARE VERY GOOD SIGNS THAT WE WILL SOON TURN THE CORNER AND BECOME PROFITABLE. TO DO THIS WE HAVE TO BECOME MORE EFFICIENT BY SEEING THAT YOU ARE BETTER TRAINED. WE MUST REDUCE SCRAP AND SECONDS TO A REASONABLE FIGURE AND WE HAVE TO PRODUCE A QUALITY PRODUCT WHICH WE CAN SELL ANYWHERE AT A REASONABLE PROFIT FOR THE COMPANY. WE NEED YOUR HELP TO DO THIS. WE NEED A TRANQUIL WORKING RELATIONSHIP WITH YOU. WE NEED ABOVE EVERYTHING ELSE TO BE COMPETITIVE WITH OTHER CANADIAN PRODUCERS.

UNION ORGANIZERS CAN AND PROBABLY WILL PROMISE MORE PAY AND OTHER BENEFITS - - MAYBE EVEN A TRIP TO THE MOON, BUT THEY DO NOT PRODUCE THESE THINGS. THEY HAVE TO COME OUT OF COMPANY EARNINGS. THE UNION ORGANIZERS AND OFFICERS WHO WILL TALK TO YOU, WILL NOT BE WORKING HERE. IT IS YOU AND YOUR COMPANY WORKING TOGETHER THAT WILL HAVE TO PROVIDE THE EARNINGS NECESSARY TO PAY FOR WHAT WE HAVE NOW AND WHAT WE RECEIVE IN THE FUTURE.

ALL I ASK IS THAT CONSIDER THE FACTS WITH GREAT CARE TO DECIDE WHAT WILL BE BEST FOR YOU AND YOUR FAMILY BEFORE YOU SIGN ANYTHING PASSED OUT BY A UNION.

SINCERELY YOURS,
SENECA WIRE OF CANADA LTD.,
"DAVID E. DORWART."

5. THE LETTER CONTAINED THE FOLLOWING STATEMENTS IN THE ORDER IN WHICH THEY ARE HEREINAFTER RECORDED. "...YOUR COMPANY HAS HAD A LOT OF EXPERIENCE IN DEALING WITH UNIONS IN THE UNITED STATES, SO WE KNOW SOMETHING ABOUT WHAT HAPPENS WHEN EMPLOYEES DECIDE THEY WANT UNION REPRESENTATION. ...PROBABLY ONLY A FEW OF YOU KNOW WHAT HAS HAPPENED TO MANY COMPANIES IN OUR INDUSTRY IN RECENT YEARS. AMERICAN WIRE FABRICS COMPANY, IN PENNSYLVANIA; CYCLONE IN ILLINOIS; ROEBLING IN NEW JERSEY; WICKWIRE BROS. IN NEW YORK; REYNOLDS IN ILLINOIS; CLARK IN TEXAS; SOME OF THE BIGGEST PRODUCERS IN THE UNITED STATES HAVE CLOSED THEIR PLANTS AND LEFT ALL OF THEIR EMPLOYEES OUT OF WORK. ONE OF THE MAIN REASONS WE HAVE JOBS FOR YOU PEOPLE TODAY IS BECAUSE B. GREENING COMPANY IN HAMILTON WAS FORCED TO GIVE UP AND SELL THEIR BUSINESS TO US. EACH OF THESE COMPANIES TRIED AND FAILED TO WORK UNDER A UNION CONTRACT. OUR OWN PLANT IN YORK, PENNSYLVANIA WAS FORCED TO CLOSE AND MOVE TO MISSISSIPPI. ...IF YOU DON'T WANT TO RISK A CHANGE IN OUR PRESENT HAPPY RELATIONS, THEN MY ADVICE IS DO NOT SIGN A CARD. ..."

6. IN ADDITION TO THE ABOVE, THERE WAS EVIDENCE THAT THE RESPONDENT'S MANAGER ADVISED THE EMPLOYEES THAT IF THE UNION CAME INTO THE PLANT THE RESPONDENT WOULD NOT BE ABLE TO TRANSFER EMPLOYEES FROM ONE JOB TO ANOTHER IN ORDER TO KEEP THEM BUSY AND THE EMPLOYEES WOULD THEREFORE NOT BE EMPLOYED FULL TIME. IN ADDITION, IT WAS SUGGESTED THAT IF THE UNION CAME IN, THE AMOUNT OF OVERTIME WOULD BE CURTAILED.

7. WE ARE OF OPINION THAT THE LETTER ABOVE REFERRED TO AND THE STATEMENTS BY THE RESPONDENT'S PLANT MANAGER WERE INTENDED TO INTIMIDATE THE EMPLOYEES BY SUGGESTING THE LIKELIHOOD OF THE PLANT CLOSING DOWN IN THE EVENT OF UNIONIZATION OR IN THE ALTERNATIVE THAT THE EARNINGS OF THE EMPLOYEES WOULD BE REDUCED BY ALTERATION OF THE HOURS NORMALLY WORKED BY THEM.

8. APPARENTLY, THE STATEMENTS OF THE PLANT MANAGER HAD THE DESIRED EFFECT BECAUSE THE EMPLOYEE WHO CIRCULATED THE PETITION ADVISED HIS FELLOW EMPLOYEES THAT IF THE UNION CAME IN THE PLANT MIGHT CLOSE. THE PETITIONER FURTHER ADVISED THE EMPLOYEES THAT THE "ONLY THING THE UNION COULD DO FOR YOU WOULD BE TO CUT OFF OVERTIME".

9. HAVING REGARD TO ALL THE CIRCUMSTANCES SURROUNDING THE ORIGINATION AND CIRCULATION OF THE DOCUMENT SUBMITTED AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

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12095-66-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. FLEP & LUMBER COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. E. TEAGLE.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND N. RUDISI FOR THE
APPLICANT, D. K. LAIDLAW FOR THE RESPONDENT, E. JONES AND
J. WIGWAUS FOR THE OBJECTORS.

DECISION OF THE BOARD: (SEPTEMBER 1, 1966).

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2. THE APPLICANT IS APPLYING FOR A UNIT OF EMPLOYEES OF THE RESPONDENT
EMPLOYED AT THE GARDEN RIVER INDIAN RESERVE IN THE DISTRICT OF ALGOMA.

3. AT THE HEARING IN THIS MATTER ON AUGUST 30TH, 1966, THE RESPONDENT FILED
AS AN EXHIBIT AN AGREEMENT DATED APRIL 15TH, 1965 ENTERED INTO BY HER MAJESTY THE
QUEEN REPRESENTED BY THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE RESPONDENT
COMPANY. BY THE TERMS OF THE AGREEMENT THE RESPONDENT FOR A SPECIFIED ANNUAL RENTAL
IS PERMITTED FOR A TEN YEAR PERIOD TO USE AND OCCUPY A DESCRIBED PARCEL OF LAND ON
THE GARDEN RIVER INDIAN RESERVE. COUNSEL FOR THE RESPONDENT DREW PARTICULAR
ATTENTION TO PARAGRAPH 11 OF THE AGREEMENT WHICH PROVIDES THAT THE RESPONDENT IN
RESPECT OF ITS BUSINESS AND OPERATIONS ON THE PERMIT AREA SHALL GIVE PREFERENCE OF
EMPLOYMENT TO MEMBERS OF THE GARDEN RIVER BAND OF INDIANS INsofar AS MEMBERS ARE
AVAILABLE AND QUALIFY FOR EMPLOYMENT.

4. THERE WAS ALSO FILED WITH THE BOARD AS AN EXHIBIT A PHOTOSTAT COPY OF A
RESOLUTION WHICH ON ITS FACE AND ACCORDING TO THE EVIDENCE OF CHIEF JOHN WIGWAUS
WAS ADOPTED AT A MEETING HELD AT THE GARDEN RIVER INDIAN RESERVATION ON APRIL 16TH,
1966 BY THE GARDEN RIVER BAND OF INDIANS IN THE SAULT STE. MARIE INDIAN AGENCY.
THE RESOLUTION READS AS FOLLOWS:

"THAT THE CHIEF AND COUNCIL DOES NOT
REGOGNIZE OR ALLOW THE UNION NOW
BEING FORMED AT THE FLERON MILL ON
THIS RESERVE."

THE RESOLUTION BEARS THE SIGNATURE OF CHIEF JOHN WIGWAUS AND THE SIGNATURES OF
FOUR COUNSELLORS. THE PHOTOSTAT IS CERTIFIED TO BE A TRUE COPY OVER THE SIGNATURE
OF A. R. AQUIN, SUPERINTENDENT OF THE SAULT STE. MARIE INDIAN AGENCY.

5. THE BOARD ALSO RECEIVED A TELEGRAM ON AUGUST 18TH FROM A.R. AQUIN WITH
REGARD TO THE INSTANT APPLICATION WHICH READS IN PART AS FOLLOWS:

"RESOLUTION PASSED BY BAND COUNCIL OF
GARDEN RIVER BANK OF INDIANS WITHOUT
REFERAL TO THIS OFFICE WHICH IS NOT
REQUIRED IN ANY CASE BY BAND COUNCILS.
ORIGINATED WITH BAND COUNCIL NOT
INDIAN AFFAIRS BRANCH."

6. NO PARTY TO THE PROCEEDING QUESTIONED THE BOARD'S JURISDICTION TO DEAL
WITH THE INSTANT APPLICATION. FURTHER, ALTHOUGH THE BOARD MADE INQUIRIES AT THE
HEARING, NO INFORMATION OR REPRESENTATIONS WERE FORTHCOMING AS TO WHETHER, OR HOW,
OR TO WHAT EXTENT THE BAND COUNCIL RESOLUTION AFFECTS OR COULD AFFECT THIS APPLI-

CATION. THE BOARD THEREFORE IS NOT AWARE OF ANY LIMITATION NO IT IN PROCEEDING TO MAKE A DISPOSITION ON THE MERITS OF THE APPLICATION.

7. COUNSEL FOR THE RESPONDENT ARGUES THAT PARAGRAPH 11 OF THE AGREEMENT WHICH GIVES PREFERENCE TO EMPLOYMENT OF THE MEMBERS OF THE GARDEN RIVER BAND OF INDIANS IS WHOLLY INCOMPATIBLE WITH THE APPLICANT HOLDING THE BARGAINING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT ON THE RESERVE. COUNSEL SUBMITS THAT IN THE PECULIAR CIRCUMSTANCES THE BOARD HAS A DISCRETION WHICH IT OUGHT TO EXERCISE AND DISMISS THE APPLICATION. COUNSEL FOR THE APPLICANT ARGUES THAT WHILE THE APPLICANT MAY ENCOUNTER DIFFICULTIES IN THE FUTURE IN NEGOTIATING A COLLECTIVE AGREEMENT THIS POSSIBILITY IN NO WAY SHOULD DISENTITLE THE APPLICANT TO CERTIFICATION AS BARGAINING AGENT FOR THE EMPLOYEES IN QUESTION.

8. THE BOARD IS OF THE OPINION THAT THE FACT OF POTENTIAL FUTURE DIFFICULTY IN THE COLLECTIVE BARGAINING RELATIONSHIP WITH THE RESPONDENT DOES NOT CONSTITUTE A VALID REASON FOR DISMISSING THE APPLICATION IF THE APPLICANT IS OTHERWISE ENTITLED TO CERTIFICATION. MOREOVER, ASSUMING THAT THE APPLICANT HAS EVIDENCE OF MEMBERSHIP FOR NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT, THERE IS NO DISCRETION VESTED IN THE BOARD UNDER SECTION 7(2) OF THE ACT TO DISMISS THE APPLICATION.

9. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT.

10. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT THE GARDEN RIVER INDIAN RESERVE IN THE DISTRICT OF ALGOMA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, LUMBER GRADERS AND KILN OPERATORS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11. MR. J. R. HENDERSON, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT IN THIS MATTER AND MORE PARTICULARLY ON THE LIST CONTAINING THE NAMES OF THE EMPLOYEES OF THE RESPONDENT FILED WITH THE BOARD IN CONNECTION WITH THIS APPLICATION.

12131-66-R: LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) (APPLICANT) v. FERGUS CABLES LIMITED (RESPONDENT) v. UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: G. PETTA, R. FRASER AND G. FLETCHER FOR THE APPLICANT; R. L. HART AND D. SIMPSON FOR THE RESPONDENT; A. RUSSELL AND A. REES FOR THE INTERVENER.

DECISION OF THE BOARD: (SEPTEMBER 12, 1966).

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2. THE UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) HEREINAFTER REFERRED TO AS THE UNITED ELECTRICAL WORKERS) FILED AN INTERVENTION

THIS APPLICATION. AS A PRELIMINARY MATTER THE BOARD CALLED UPON THE REPRESENTATIVE OF THE UNITED ELECTRICAL WORKERS WHO APPEARED AT THE HEARING AND THE REPRESENTATIVES OF THE APPLICANT AND THE RESPONDENT TO MAKE REPRESENTATIONS WITH REGARD TO THE STATUS OF THE UNITED ELECTRICAL WORKERS IN THIS PROCEEDING. UPON CONSIDERATION OF THE REPRESENTATIONS OF THE PARTIES THE BOARD RULED THAT IN VIEW OF THE FACT THAT THE UNITED ELECTRICAL WORKERS DID NOT CLAIM TO REPRESENT ANY OF THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION AS BARGAINING AGENT, THE UNITED ELECTRICAL WORKERS FAILED TO ESTABLISH THAT IT HAD ANY INTEREST IN THIS PROCEEDING. HAVING FOUND THAT THE UNITED ELECTRICAL WORKERS ARE STRANGERS TO THE PROCEEDING, THE BOARD DECLINED TO GRANT THEM THE STATUS OF A PARTY AND REFUSED TO ENTERTAIN ANY REPRESENTATIONS ON THEIR BEHALF.

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12159-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE BELLEVILLE PUBLIC SCHOOL BOARD (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT HEARING: EDWARD M. GRAY AND W. A. ACTON FOR THE APPLICANT, H. M. PAYETTE, J. L. ANDERSON AND L. A. KELLS FOR THE RESPONDENT, AND NO ONE APPEARING FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (SEPTEMBER 21, 1966).

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4. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT, R.S.O. 1960, C. 202, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE RESPONDENT FILED WITH THE BOARD AT THE HEARING A DOCUMENT TYPED ON THE LETTERHEAD OF THE BELLEVILLE PUBLIC SCHOOL BOARD AND HEADED AS FOLLOWS:

DECEMBER 20, 1965 - AMENDED, 1966

WORKING RULES AND CONDITIONS OF EMPLOYMENT OF
CUSTODIAL AND MAINTENANCE EMPLOYEES OF THE BELLEVILLE
PUBLIC SCHOOL BOARD - REVISED Dec. 1965

THE FINAL PAGE OF THE THREE PAGE DOCUMENT IS DATED FEBRUARY 3, 1966.

6. THE RESPONDENT ARGUED THAT THE DOCUMENT CONSTITUTES A COLLECTIVE AGREEMENT BETWEEN IT AND THE "EMPLOYEES' ASSOCIATION", OR THE BELLEVILLE PUBLIC SCHOOLS CUSTODIAN AND MAINTENANCE ASSOCIATION, WHICH APPEARS TO BE THE SAME THING, AND THAT, AS SUCH, IT CONSTITUTES A BAR TO THE PRESENT APPLICATION.

7. THE DOCUMENT FILED BEARS NO SIGNATURES AND THE EVIDENCE OF THE RESPONDENT IS THAT NO SIGNED DOCUMENT EXISTS EVIDENCING AN AGREEMENT BETWEEN

THE PARTIES. THESE FACTS MAKE IT UNNECESSARY FOR THE BOARD TO DEAL WITH ANY OF THE OTHER ASPECTS OF THE DOCUMENT WHICH MIGHT OTHERWISE BE RELEVANT TO A DETERMINATION OF ITS STATUS AS A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1 (1) (c) OF THE ACT.

8. ADOPTING THE REASONING AND FOLLOWING THE DECISION SET OUT IN THE CANADA MACHINERY CORPORATION LIMITED CASE, 61 C.L.L.C., P. 918; C.L.S. 76-729, THE BOARD FINDS THAT BECAUSE IT IS NOT SIGNED BY THE PARTIES CONCERNED THE DOCUMENT FILED HEREIN IS NOT A COLLECTIVE AGREEMENT AND CONSEQUENTLY IS NOT A BAR TO THE PRESENT APPLICATION.

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12166-66-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION THE UNITED STATES AND CANADA LOCAL UNION No. 172 (APPLICANT) v. MILSOM FLOORS LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN, AND BOARD MEMBERS D. FORGIE AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: A. MARIANO FOR THE APPLICANT AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: (SEPTEMBER 12, 1966).

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3. THE APPLICANT IN THIS CASE IS LOCAL UNION No. 172 OF THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA. THE EVIDENCE OF MEMBERSHIP FILED IN SUPPORT OF THE APPLICATION CONSISTS OF CERTIFICATES OF MEMBERSHIP, PROPERLY COMPLETED, WHICH CERTIFY THAT THE EMPLOYEES CONCERNED ARE MEMBERS OF THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA. WHILE THIS BOARD HAS HELD EVIDENCE OF MEMBERSHIP IN A LOCAL UNION IS EVIDENCE OF MEMBERSHIP IN THE PARENT UNION OF THE PARTICULAR LOCAL, IT HAS NEVER HELD THAT EVIDENCE OF MEMBERSHIP IN THE PARENT IS PER SE EVIDENCE OF MEMBERSHIP IN A PARTICULAR LOCAL. THERE WAS THUS NO DOCUMENTARY EVIDENCE BEFORE THE BOARD THAT THE EMPLOYEES AFFECTED BY THE APPLICATION WERE MEMBERS OF LOCAL UNION No. 172.

4. AS A RESULT, THE MATTER WAS PUT ON FOR HEARING AT WHICH TIME THE BOARD WAS INFORMED THAT THE EMPLOYEES IN QUESTION WERE MEMBERS OF LOCAL 124 OF THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA BUT WERE NOT MEMBERS OF LOCAL 172, NOR HAD THEY DEPOSITED TRAVELLING CARDS WITH LOCAL 172.

IN THESE CIRCUMSTANCES, THEREFORE, THE BOARD IS UNABLE TO FIND THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE MEMBERS OF LOCAL 172, THE APPLICANT TRADE UNION, WITHIN THE MEANING OF SECTION 7 OF THE LABOUR RELATIONS ACT. THE APPLICATION MUST THEREFORE BE DISMISSED.

IF A CASE SHOULD ARISE WHERE AN APPLICANT TRADE UNION LOCAL IS RELYING THE DEPOSIT OF TRANSFER CARDS, CARE SHOULD BE TAKEN TO MAKE CERTAIN THAT EVIDENCE OF SUCH TRANSFER AND DEPOSIT IS FILED WITH THE BOARD ON OR BEFORE THE TERMINAL DA

FOR THE APPLICATION. REFERENCE IS MADE TO SWANSEA CONSTRUCTION COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1965, P. 645.

5. IN THE RESULT, THIS APPLICATION IS DISMISSED.

12191-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BROCK DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. W. FORGIE.

APPEARANCES AT THE HEARING: R. J. ANDERSON FOR THE APPLICANT, W. J. HEMMERICK, Q.C., FOR THE RESPONDENT.

DECISION OF THE BOARD: (SEPTEMBER 23, 1966).

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2. IN APPLICATIONS FOR CERTIFICATION COVERING EMPLOYEES OF SCHOOL BOARDS AND BOARDS OF EDUCATION THERE HAVE BEEN DIFFERENCES IN THE PAST AS TO THE MANNER IN WHICH THE BOARD HAS DESCRIBED THE UNIT FOUND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. IN SOME INSTANCES THE UNIT HAS BEEN DESCRIBED IN TERMS OF EMPLOYEES ENGAGED IN CARETAKING AND MAINTENANCE AND IN OTHER INSTANCES THE UNIT HAS BEEN DESCRIBED SO AS TO ENCOMPASS ALL EMPLOYEES. THE BOARD IS INCLINED TOWARD THE VIEW, HOWEVER, THAT THE LATTER IS THE MORE APPROPRIATE DESCRIPTION.

3. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT THE SECRETARY-TREASURER AND PERSONS ABOVE THE RANK OF SECRETARY-TREASURER, OFFICE STAFF AND PROFESSIONAL TEACHING STAFF CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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12225-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 607 (APPLICANT) V. PILLAR CONSTRUCTION LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND ALTERNATE CHAIRMAN, AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

APPEARANCES AT HEARING: HARRIS ROONEY FOR THE APPLICANT, WARREN K. WINKLER AND R. J. SULPHUR FOR THE RESPONDENT.

DECISION OF THE BOARD: (SEPTEMBER 29, 1966).

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3. THE JOB SITE AFFECTED BY THIS APPLICATION IS LOCATED AT OR NEAR ABITIBI CANYON IN THE TOWNSHIP OF PINARD IN THE DISTRICT OF COCHRANE. THE TOWNSHIP IN QUESTION DOES NOT FALL INTO ANY ESTABLISHED BOARD GEOGRAPHIC AREA. THE APPLICANT PROPOSES AN AREA CONSISTING OF THE DISTRICT OF COCHRANE. IN RECENT CASES BEFORE THE BOARD OTHER TRADE UNIONS HAVE PROPOSED AN AREA WHICH WOULD RESULT IN DIVIDING THE DISTRICT OF COCHRANE INTO TWO PARTS. IF THE APPLICANT'S PROPOSAL WERE ACCEPTED IN THIS CASE THERE WOULD BE A CONFLICT WITH BOARD AREA #19. IN

ALL THESE CIRCUMSTANCES AND AS AN INTERIM MEASURE ONLY, THE BOARD FINDS FURTHER THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF PINARD IN THE DISTRICT OF COCHRANE AND IN THOSE TOWNSHIPS IMMEDIATELY ADJACE TO THE SAID TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD FINDS THAT THE SCREENING MACHINE OPERATOR AND THE MIXER OPERATOR ARE EMPLOYEES INCLUDED IN THE BARGAINING UNIT BUT THAT THE FRONT END LOADER OPERATOR, THE BULLDOZER OPERATOR AND THE TRUCK DRIVER ARE NOT EMPLOYEES INCLUDED IN THE BARGAINING UNIT. THE BOARD FINDS FURTHER THAT ON THE DATE OF THE MAKING OF THE APPLICATION THERE WERE NINETEEN EMPLOYEES IN THE BARGAINING UNIT.

5. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP FOR THIRTEEN PERSONS. TWO OF THE CARDS FILED WERE NOT ACCOMPANIED BY RECEIPTS. ALTHOUGH THE CARDS IN QUESTION CONTAINED CERTAIN NOTATIONS INDICATING PAYMENTS OF MONIES, THERE IS NO SIGNED STATEMENT BY EITHER THE EMPLOYEES OR AN OFFICER OF THE APPLICANT THAT MONEY WAS IN FACT PAID BY THE EMPLOYEES IN QUESTION. THERE IS THUS NO SATISFACTORY PROOF OF MONEY PAYMENT BY THE TWO PERSONS IN QUESTION AND ACCORDINGLY THE APPLICATION CARDS DO NOT MEET THE BOARD'S STANDARDS RESPECTING PROOF OF MEMBERSHIP IN THE APPLICANT TRADE UNION.

THE APPLICANT IS THUS LEFT WITH EVIDENCE OF MEMBERSHIP FOR ELEVEN PERSONS. ONE OF THESE ELEVEN CARDS IS FOR A PERSON NOT INCLUDED IN THE NINETEEN PERSONS FOUND TO BE IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION. IF THIS EMPLOYEE WERE ADDED TO THE LIST OF NINETEEN, THE APPLICANT HAVE AS MEMBERS ELEVEN EMPLOYEES OUT OF TWENTY. IF SUCH PERSON IS NOT ADDED, THE APPLICANT HAS AS MEMBERS TEN PERSONS OUT OF NINETEEN. IN EITHER CASE THE APPLICANT IS ONLY IN A VOTE POSITION UNDER SECTION 7 OF THE LABOUR RELATIONS ACT. THERE IS THUS NO NEED TO APPOINT AN EXAMINER IN THIS CASE. IF ON THE REPRESENTATION VOTE ANY QUESTIONS ARISE WITH RESPECT TO THE STATUS OF THE EMPLOYEE, FOR WHOM THE APPLICANT FILED A LOST CARD, THE RETURNING OFFICER IS DIRECTED TO SEAL THE BALLOT BOX AND TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF THAT EMPLOYEE AND TO REPORT TO THE BOARD THEREON.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

7. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

8. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

12242-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 18 (APPLICANT) v. SOVEREIGN CONSTRUCTION COMPANY LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND ALTERNATE CHAIRMAN, AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

APPEARANCES AT HEARING: THOMAS FENWICK FOR THE APPLICANT AND E. L. STRINGER, JOHN GUGENBERGER AND KARL KRAUS FOR THE RESPONDENT.

DECISION OF THE BOARD: (SEPTEMBER 29, 1966).

1. IT HAS BEEN THE PRACTICE OF THE BOARD TO ACCEPT THE FILING OF A FORM 9, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, (NOW FORM 8), UP TO OR DURING THE HEARING OF AN APPLICATION FOR CERTIFICATION. IN ACCEPTING SUCH LATE FILING THE BOARD HAS NOT USUALLY BEEN CONCERNED WITH THE REASON FOR FAILING TO FILE THE FORM WITHIN THE TIME PRESCRIBED BY THE BOARD'S RULES OF PROCEDURE.

2. CASES FALLING UNDER SECTION 92 OF THE LABOUR RELATIONS ACT, THAT IS, CONSTRUCTION INDUSTRY APPLICATIONS FOR CERTIFICATION, DO NOT NECESSARILY RESULT IN A HEARING. WHERE THE CASE IS TO BE DISPOSED OF WITHOUT A HEARING, THE BOARD REQUIRES STRICT COMPLIANCE WITH SECTION 69 (NOW SECTION 68) OF ITS RULES OF PROCEDURE. HOWEVER, WHERE A CONSTRUCTION INDUSTRY CASE IS LISTED FOR HEARING, WE ARE UNABLE TO DISCOVER ANY VALID REASON WHY THE PRACTICE ADOPTED IN NON-CONSTRUCTION INDUSTRY CASES SHOULD NOT BE FOLLOWED.

3. A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY (FORMERLY FORM 60), WAS RECEIVED IN THIS CASE BY THE BOARD PRIOR TO THE DAY OF THE HEARING. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD FINDS THAT THE APPLICANT HAS FILED A DULY COMPLETED FORM 54.

4. MR. J. R. HENDERSON, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT.

INDEXED ENDORSEMENT - PROSECUTION

11787-66-U: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) v. TILCO PLASTICS LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, V. SKURJAT AND J. WHITEHOUSE FOR THE APPLICANT, H. P. PAMMETT, P. D. BAKER, D. G. TRIPP AND J. SOPINKA FOR THE RESPONDENT.

DECISION OF J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN:

(SEPTEMBER 23, 1966).

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT ON THE GROUNDS THAT SINCE APPROXIMATELY DECEMBER 17TH, 1965, THE

RESPONDENT HAS REFUSED AND CONTINUES TO REFUSE TO BARGAIN IN GOOD FAITH AND TO MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT WITH THE APPLICANT IN CONTRAVENTION OF SECTION 12 OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT WAS CERTIFIED BY THE BOARD ON JULY 22ND, 1965 AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT. THE PARTIES ARE IN AGREEMENT THAT SHORTLY THEREAFTER WRITTEN NOTICE WAS GIVEN BY THE APPLICANT TO THE RESPONDENT OF ITS DESIRE TO BARGAIN AND THAT A NUMBER OF NEGOTIATING SESSIONS TOOK PLACE BETWEEN THE PARTIES DURING THE MONTH OF AUGUST 1965. THE PARTIES FURTHER AGREE THAT UPON APPLICATION OF THE APPLICANT A CONCILIATION OFFICER WAS APPOINTED IN EARLY SEPTEMBER 1965 AND THAT FURTHER MEETINGS BOTH WITH AND WITHOUT THE ASSISTANCE OF THE CONCILIATION OFFICER WERE HELD BY THE PARTIES OVER A PERIOD EXTENDING INTO NOVEMBER OF 1965.

3. ON FRIDAY, NOVEMBER 12TH, 1965, A DAY LONG MEETING BETWEEN THE PARTIES TOOK PLACE IN TORONTO AT THE OFFICES OF THE SOLICITORS FOR THE RESPONDENT. PRESENT AT THE MEETING ON BEHALF OF THE APPLICANT WERE VICTOR SKURJAT, JOINT BOARD MANAGER OF THE GREATER TORONTO TEXTILE JOINT BOARD, AND AN ASSOCIATE MR. McCONNELL. ROBERT SHIRRIFF, SOLICITOR FOR THE RESPONDENT, AND HAROLD PAMMETT, OWNER-MANAGER OF THE COMPANY, REPRESENTED THE RESPONDENT. T. E. ARMSTRONG, SOLICITOR FOR THE APPLICANT, WAS IN ATTENDANCE AT THE LATTER STAGES OF THE MEETING. THE MAJOR OUTSTANDING ISSUE BETWEEN THE PARTIES AT THAT MEETING WAS THE COMPOSITION OF THE BARGAINING UNIT. MORE PARTICULARLY THE RESPONDENT WAS NOT AGREEABLE TO THE INCLUSION OF TOOLMAKERS IN THE BARGAINING UNIT AND THE APPLICANT MAINTAINED THEY PROPERLY BELONGED IN THE UNIT. SHIRRIFF'S EVIDENCE IS THAT THE PARTIES ALSO HAD NOT REACHED A FINAL AGREEMENT ON THE UNION SECURITY PROVISIONS TO BE INCLUDED IN THE COLLECTIVE AGREEMENT AND THAT MONETARY MATTERS WERE STILL TO BE SETTLED.

4. SHIRRIFF TESTIFIED THAT THE PARTIES USING THE RESPONDENT'S ORIGINAL DRAFT AGREEMENT AS A BASIS OF DISCUSSION, WENT THROUGH THE ENTIRE AGREEMENT PARAGRAPH BY PARAGRAPH AND REACHED A SETTLEMENT BOTH AS TO THE CONTENT AND LANGUAGE OF EACH AND EVERY ARTICLE THAT WAS TO BE INCLUDED IN THE COLLECTIVE AGREEMENT. ACCORDING TO THE EVIDENCE, HAROLD PAMMETT, DURING THE FINAL STAGES OF THE MEETING, AGREED TO THE INCLUSION OF THE TOOLMAKERS IN THE BARGAINING UNIT ON THE UNDERSTANDING THAT THE RESPONDENT UNILATERALLY COULD ADJUST THE WAGE RATE FOR THAT CATEGORY OF EMPLOYEE. SHIRRIFF'S TESTIMONY IS THAT A FURTHER STIPULATION MADE BY PAMMETT, IN AGREEING TO THE INCLUSION OF THE TOOLMAKERS IN THE UNIT, WAS THAT THE RESPONDENT WOULD NOT PAY TO ITS EMPLOYEES A TWENTY-FIVE DOLLAR SIGNING BONUS IN LIEU OF RETROACTIVE PAY. THE EVIDENCE OF SKURJAT IS THAT THE APPLICANT AGREED TO PAMMETT'S STIPULATION CONCERNING THE WAGE RATE ADJUSTMENT FOR TOOLMAKERS BUT THAT THE NON-PAYMENT OF THE TWENTY-FIVE DOLLAR SIGNING BONUS FORMED NO PART OF THE AGREEMENT.

5. AT THE CONCLUSION OF THE MEETING ON NOVEMBER 12TH, HOWEVER, BOTH PARTIES BELIEVED THAT THEY HAD REACHED A COMPLETE UNDERSTANDING ON THE TERMS TO BE INCORPORATED IN THE COLLECTIVE AGREEMENT INCLUDING SETTLEMENT ON THE ISSUE OF THE TOOLMAKERS AND ON THE TERMS FOR UNION SECURITY. SHIRRIFF UNDERTOOK TO PREPARE THE AGREEMENT IN ITS FINAL FORM AND TO PROVIDE SKURJAT WITH A COPY BY MONDAY, NOVEMBER 15TH. SKURJAT'S EVIDENCE IS THAT HE INFORMED THE UNION MEMBERSHIP AT A MEETING ON SUNDAY, NOVEMBER 14TH OF THE TERMS OF THE AGREEMENT AS HE UNDERSTOOD THEM AND THAT THE MEMBERSHIP RATIFIED THE SETTLEMENT. ONLY ON MONDAY, NOVEMBER 15TH DID THE MISUNDERSTANDING CONCERNING THE TWENTY-FIVE DOLLAR SIGNING BONUS BECOME APPARENT TO THE PARTIES. TWO FURTHER MEETINGS WERE HELD IN AN EFFORT TO

RESOLVE THIS MATTER DURING WHICH THE RESPONDENT PROPOSED THE PAYMENT OF A FIFTEEN DOLLAR SIGNING BONUS. THE PROPOSAL WAS REJECTED BY THE APPLICANT. AT THIS JUNCTURE NEGOTIATIONS BETWEEN THE PARTIES COMPLETELY BROKE DOWN.

6. BY LETTER DATED DECEMBER 6TH, 1965, THE PARTIES WERE NOTIFIED THAT THE MINISTER HAD DECIDED NOT TO APPOINT A CONCILIATION BOARD. ON DECEMBER 14TH, THE APPLICANT CALLED A STRIKE OF THE EMPLOYEES OF THE RESPONDENT AND SOME OF THE EMPLOYEES WENT ON STRIKE AND PROCEEDED TO PICKET THE COMPANY PREMISES.

7. WITH THE EXCEPTION OF WHAT APPEARS TO HAVE BEEN A BRIEF AND ABORTIVE MEETING ON MARCH 22ND, 1966, THERE WAS NO DIRECT COMMUNICATION BETWEEN THE PARTIES FROM THE DATE OF THE COMMENCEMENT OF THE STRIKE ON DECEMBER 14TH, UNTIL SKURJAT, BY LETTER DATED APRIL 28TH, 1966, ADDRESSED TO PAMMETT, REQUESTED THAT THE RESPONDENT MEET WITH THE APPLICANT ON MAY 13TH, 1966. THE BODY OF THE LETTER READS AS FOLLOWS:

IN ORDER TO TRY AND SETTLE THE STRIKE, THE UNION WISHES TO MAKE THE FOLLOWING PROPOSALS:

1. UNION SECURITY.

ALL EMPLOYEES WHO, ON EXECUTION OF THE AGREEMENT ARE MEMBERS OF THE UNION OR WILL SUBSEQUENTLY JOIN THE UNION WILL, AS A CONDITION OF EMPLOYMENT, REMAIN MEMBERS IN GOOD STANDING FOR THE DURATION OF THIS AGREEMENT.

NEW EMPLOYEES, AS A CONDITION OF EMPLOYMENT, WILL BECOME MEMBERS OF THE UNION UPON COMPLETION OF 60 CALENDAR DAYS OF EMPLOYMENT AND REMAIN MEMBERS IN GOOD STANDING.

ALL EMPLOYEES, AS A CONDITION OF EMPLOYMENT, WILL PAY UNION DUES OR THE EQUIVALENT, AS PRESCRIBED BY THE CONSTITUTION OF T.W.U.A.

2. RE-EMPLOYMENT.

UPON THE SIGNING OF THE AGREEMENT ONE HALF OF THE NUMBER OF EMPLOYEES CURRENTLY ON STRIKE WILL BE RE-EMPLOYED.

THE REMAINING HALF WILL BE RE-EMPLOYED WITHIN A ONE-MONTH PERIOD.

RE-EMPLOYMENT WILL BE ON THE BASIS OF EMPLOYEES' SENIORITY.

3. THE AGREEMENT WILL COMMENCE FROM THE DAY OF SIGNING RATHER THAN FROM NOVEMBER, 1965, AS ORIGINALLY PROPOSED.

THE ABOVE PROPOSALS ARE NEW AND THEY ARE ENTERED WITH A VIEW TO AFFECTING A SETTLEMENT.

HE WILL BE IN A BOARD ROOM IN THE EMPRESS HOTEL, PETERBOROUGH, AT 10 A.M. ON MAY 13TH, 1966, IN ORDER TO MEET YOU.

SHOULD THIS DATE BE INCONVENIENT PLEASE LET US KNOW OF AN ALTERNATE.

8. PAMMETT, SHIRRIFF, MRS. RAJSKY, WHO WAS IDENTIFIED AS A FORELADY IN THE EMPLOY OF THE RESPONDENT, AND RICHARD POTTER, A STUDENT-AT-LAW IN THE OFFICE OF THE SOLICITORS FOR THE RESPONDENT, ATTENDED AT MAY 13TH MEETING. SKURJAT AND MCCONNELL REPRESENTED THE APPLICANT AT THE MEETING. ACCORDING TO THE EVIDENCE, THE FIRST MATTER DISCUSSED BY THE PARTIES WAS THE RECALL OF THE STRIKING EMPLOYEES. SKURJAT PUT FORWARD THE APPLICANT'S PROPOSAL AS SET FORTH IN HIS LETTER OF APRIL 28TH, NAMELY, THAT ON THE SIGNING OF A COLLECTIVE AGREEMENT ONE HALF OF THE STRIKING EMPLOYEES WOULD BE RECALLED WITHIN ONE MONTH. IT WAS ESTABLISHED AT THE MEETING THAT 29 STRIKING EMPLOYEES WERE INVOLVED. PAMMETT AND SHIRRIFF INFORMED SKURJAT THAT THE JOBS OF THE STRIKING EMPLOYEES HAD BEEN FILLED BY NEW EMPLOYEES HIRED SINCE THE STRIKE COMMENCED AND THAT THE RESPONDENT DID NOT INTEND TO DISCHARGE THESE EMPLOYEES. PAMMETT FURTHER STATED THAT THE RESPONDENT HAD IN ITS EMPLOY 65 EMPLOYEES WHICH WAS THE FULL COMPLEMENT REQUIRED TO CARRY ON, AT FULL CAPACITY, THE PRODUCTION OPERATIONS OF THE COMPANY. PAMMETT AND SHIRRIFF THEREUPON REJECTED THE APPLICANT'S PROPOSAL BUT STATED THE RESPONDENT WAS PREPARED TO RECALL FIVE OF THE STRIKING EMPLOYEES. THEY WOULD NOT MAKE ANY COMMITMENT, HOWEVER, CONCERNING THE RECALL OF THE REMAINDER OF THE STRIKING EMPLOYEES. SHIRRIFF ALSO DECLINED TO GIVE THE NAMES OF THE FIVE STRIKING EMPLOYEES THAT THE RESPONDENT WAS PREPARED TO RECALL PRIOR TO A SETTLEMENT BEING REACHED ON ALL OUTSTANDING ISSUES. THE BASIS OF HIS REFUSAL WAS THAT HE WAS APPREHENSIVE THE UNION MIGHT "BLACK LIST" THE NAMED EMPLOYEES. ACCORDING TO THE EVIDENCE OF SKURJAT THE RESPONDENT DID UNDERTAKE TO INCLUDE LILLIAM DOWNER, THE CHAIRMAN OF THE EMPLOYEES STRIKE COMMITTEE, AMONG THE FIVE EMPLOYEES IT WAS PREPARED TO RECALL. SHIRRIFF TESTIFIED THAT AT THE CONCLUSION OF THE MEETING HE INFORMED SKURJAT THAT THE RESPONDENT WAS PREPARED TO SET A TIME LIMIT WITHIN WHICH IT WOULD RECALL THE FIVE STRIKING EMPLOYEES.

9. DURING THE DISCUSSION RELATING TO THE RECALL OF THE STRIKING EMPLOYEES SOME CONVERSATION ENSUED CONCERNING THE SENIORITY RIGHTS OF THOSE EMPLOYEES WHOM THE RESPONDENT WAS PREPARED TO RECALL. PAMMETT STATED THAT THE RECALLED EMPLOYEES AND THE NEW EMPLOYEES HIRED SINCE THE COMMENCEMENT OF THE STRIKE WOULD HAVE EQUAL SENIORITY. IT APPEARS FROM THE EVIDENCE THAT THERE WAS SOME TALK AS TO WHETHER IN THE EVENT OF A LAY-OFF THE RECALLED STRIKERS OR THE NEW EMPLOYEES WOULD BE LAID OFF FIRST. IT FURTHER APPEARS FROM THE EVIDENCE THAT NO CONCLUSION WAS REACHED ON THIS POINT AND THAT THE MATTER WAS LEFT IN ABEYANCE.

10. THE PARTIES THEN CONSIDERED THE APPLICANT'S PROPOSAL AS SET OUT IN ITS LETTER OF APRIL 28TH ON UNION SECURITY. SHIRRIFF SAID THAT THE PROPOSALS WERE MORE STRINGENT THAN THOSE AGREED UPON BY THE PARTIES AT THE MEETING ON NOVEMBER 12TH, 1965. HE ASSERTED THAT THE AGREEMENT REACHED BY THE PARTIES ON THAT OCCASION WAS THAT THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE THE COLLECTIVE AGREEMENT WAS EXECUTED, WHO WERE NOT MEMBERS OF THE UNION, WOULD NOT BE REQUIRED TO BECOME MEMBERS OR TO PAY UNION DUES. SHIRRIFF CLAIMED THEREFORE THAT THE UNION SECURITY PROVISIONS NOW PROPOSED BY THE APPLICANT REPRESENTED NO CONCESSION WHATSOEVER. THE RESPONDENT ADOPTED THE POSITION THAT

IT WAS ONLY PREPARED TO ACCEPT THE TERMS OF UNION SECURITY AGREED UPON ON NOVEMBER 12TH. SKURJAT, ON THE OTHER HAND, DENIED THAT THE APPLICANT'S PROPOSAL DID NOT REPRESENT A CONCESSION. HE INSISTED THAT THE RESPONDENT HAD AGREED THAT ALL OF ITS EMPLOYEES WOULD BE REQUIRED TO JOIN THE UNION AND PAY UNION DUES. IN OTHER WORDS, SKURJAT CLAIMED THE RESPONDENT HAD AGREED TO A UNION SHOP.

11. IN DISCUSSING THE APPLICANT'S PROPOSAL ON THE DURATION OF THE AGREEMENT PAMMETT TOOK THE POSITION THAT IT REALLY DID NOT MAKE ANY DIFFERENCE AS THE RESPONDENT WAS ALREADY PAYING ITS EMPLOYEES THE WAGE RATES AGREED UPON ON NOVEMBER 12TH, 1965.

12. AT THE MEETING SHIRRIFF AND PAMMETT AS PART OF ANY SETTLEMENT PROPOSED THAT THE APPLICANT PAY THE RESPONDENT FOR DAMAGE DONE TO ITS PREMISES DURING THE STRIKE AND SUGGESTED A TENTATIVE FIGURE OF FIFTEEN HUNDRED DOLLARS. SKURJAT SAID THAT THE APPLICANT WAS PREPARED TO COMPENSATE THE RESPONDENT FOR DAMAGES WHICH THE RESPONDENT COULD PROVE WERE ATTRIBUTABLE TO MEMBERS OF THE UNION. SHIRRIFF POINTED OUT THE DIFFICULTIES IN SECURING SUCH PROOF. THE MATTER DOES NOT APPEAR TO HAVE BEEN PURSUED FURTHER AT THE MEETING.

13. NO MENTION WAS MADE AT THE MAY 13TH MEETING OF THE APPLICANT'S DEMAND FOR A TWENTY-FIVE DOLLAR SIGNING BONUS, UPON WHICH THE NEGOTIATIONS HAD FOUNDLED IN NOVEMBER OF 1965.

14. AT THE CONCLUSION OF THE MEETING SKURJAT UNDERTOOK TO CONSIDER THE RESPONDENT'S POSITION AND TO SO INFORM HIS COMMITTEE AND TO GIVE AN ANSWER TO PAMMETT. SKURJAT ALSO INQUIRED AS TO WHETHER THE RESPONDENT WAS PREPARED TO HOLD A FURTHER MEETING. ACCORDING TO SHIRRIFF HE ASKED SKURJAT TO TAKE THE RESPONDENT'S PROPOSALS BACK TO HIS COMMITTEE BEFORE ANY DECISION WOULD BE MADE ON THAT MATTER.

15. SKURJAT TESTIFIED THAT ON MAY 14TH HE TELEPHONED PAMMETT AND TOLD HIM THAT THE RESPONDENT'S POSITION ON THE RECALL OF THE STRIKERS WAS NOT ACCEPTABLE TO THE UNION. SKURJAT'S EVIDENCE IS THAT HE ASKED PAMMETT TO RECONSIDER HIS POSITION ON THIS ISSUE SO THAT THE PARTIES COULD REACH A SETTLEMENT. SKURJAT'S TESTIMONY IS THAT PAMMETT REFUSED TO MAKE ANY FURTHER COMMITMENT BEYOND THE RECALL OF FIVE STRIKING EMPLOYEES.

16. THE EVIDENCE MAKES IT CLEAR AND IT IS NOT SERIOUSLY DISPUTED BY THE APPLICANT THAT UP UNTIL THE BREAKDOWN IN NEGOTIATION LATE IN NOVEMBER OF 1965, THE RESPONDENT HAD BARGAINED IN GOOD FAITH TO MAKE A COLLECTIVE AGREEMENT WITH THE APPLICANT. AS WAS NOTED EARLIER ON DECEMBER 6TH THE MINISTER INFORMED THE PARTIES THAT THERE WOULD BE NO CONCILIATION BOARD, AND ON DECEMBER 14TH THE STRIKE COMMENCED.

17. IN THE NEW METHOD LAUNDRY AND DRY CLEANERS CASE (1957) CCH CLLR TRANSFER BINDER 1955-1959 ¶16,015; C.L.S. 76-533, THE BOARD HELD THAT ALTHOUGH THE CONCILIATION PROCEDURE PROVIDED UNDER THE ACT HAD BEEN EXHAUSTED AND THE PARTIES WERE ENTITLED TO GO ON STRIKE OR TO LOCK-OUT, THE OBLIGATION TO BARGAIN WAS NOT EXTINGUISHED. THE BOARD INDICATED THAT THE NATURE AND EXTENT OF THE BARGAINING IN WHICH A PARTY WAS REQUIRED BY LAW TO ENGAGE AT THAT POINT MIGHT BE QUITE DIFFERENT FROM WHAT THEY WERE EARLIER. IT DID NOT, HOWEVER, ATTEMPT

TO DEFINE THE NATURE AND THE EXTENT OF BARGAINING REQUIRED OF A PARTY. THE BOARD DID, NEVERTHELESS, SUGGEST FACTORS THAT MIGHT BE TAKEN INTO ACCOUNT IN DETERMINING WHAT AN EMPLOYER OR TRADE UNION WOULD BE REQUIRED TO DO AT THAT STAGE OF BARGAINING IN ORDER TO COMPLY WITH SECTION 12 OF THE ACT. THESE INCLUDE SUCH FACTORS AS WHETHER ONE OF THE PARTIES HAS REQUESTED THE OTHER TO RESUME NEGOTIATIONS AND WHETHER THE PARTY MAKING SUCH A REQUEST HAS INDICATED THAT IT IS PREPARED TO MAKE SIGNIFICANT CONCESSIONS. THE BOARD ALSO SUGGESTED THAT WHETHER A STRIKE OR LOCK-OUT IS IN PROGRESS WAS A FACTOR TO BE CONSIDERED.

18. WITH REFERENCE TO THE LATTER CONSIDERATION, THE STRIKE WHICH BEGAN ON DECEMBER 14TH AND STILL CONTINUED ON MAY 13TH IS THE PERIOD OF TIME DURING WHICH THE APPLICANT ALLEGES THE RESPONDENT REFUSED TO BARGAIN IN GOOD FAITH. CONSIDERABLE EVIDENCE WAS ADDUCED AS TO THE PICKETING ACTIVITIES AND CONDUCT OF THE STRIKING EMPLOYEES AND OF OTHER PERSONS WHO LENT THEIR SUPPORT TO THE STRIKERS. THE EVIDENCE REVEALS HARASSMENT OF A VARIETY OF SORTS BY THE PICKETERS AND THEIR SUPPORTERS OF MEMBERS OF MANAGEMENT INCLUDING PAMMETT AND OF THE EMPLOYEES WHO CONTINUED TO WORK IN THE PLANT. THERE IS AS WELL SOME EVIDENCE THAT THE EMPLOYEES WHO CONTINUED TO WORK IN THE PLANT REPLIED IN KIND TO THE VERBAL HARASSMENT AND POSSIBLY ON OCCASION INSTIGATED SUCH HARASSMENT. MOREOVER, THERE IS EVIDENCE OF PHYSICAL DESTRUCTION OF PROPERTY OF THE RESPONDENT. WHILE IT APPEARS THAT THE MOST INTENSIVE HARASSING ACTIVITIES AND MOST OF THE PHYSICAL DAMAGE TO THE RESPONDENT'S PREMISES OCCURRED PRIOR TO FEBRUARY 25TH, WE FIND ON THE EVIDENCE THAT IT DID NOT ENTIRELY CEASE IN THE SUCCEEDING MONTHS WITH WHICH WE ARE HERE CONCERNED. THERE IS ALSO EVIDENCE THAT PAMMETT MADE REMARKS TO PICKETERS AND STATEMENTS TO BOTH LILLIAN BOWNER AND SKURJAT DURING THE COURSE OF THE STRIKE WHICH COUNSEL FOR THE APPLICANT SUBMITS SHOW THAT PAMMETT HAD ADOPTED AN INTRANSIGENT NEGATIVE ATTITUDE WITH REGARD TO ANY FURTHER DEALINGS WITH THE APPLICANT UNION.

19. ALL OF THE EVIDENCE RELATING TO THE STRIKE MAKES IT VERY CLEAR THAT THE CONTEST WAGED BETWEEN THE APPLICANT AND THE RESPONDENT GENERATED A HIGHLY EMOTIONAL ENVIRONMENT WHICH REACHED ITS CULMINATION IN THE MASS PICKETING OR DEMONSTRATIONS WHICH OCCURRED ON FEBRUARY 23RD AND 24TH. IT IS ALSO APPARENT FROM THE EVIDENCE THAT THE EVENTS OF THOSE TWO DAYS AND THEIR AFTERMATH EMBITTERED THE FEELINGS OF THE PARTIES TOWARDS EACH OTHER AND THOSE FEELINGS WERE BY NO MEANS COMPLETELY DISSIPATED IN THE SUCCEEDING MONTHS. WHILE PAMMETT'S STATEMENTS AND REMARKS REFLECT A TRUCULENT ATTITUDE TOWARDS THE UNION, APPRAISING THEM IN THE CONTEXT OF THE STRIKE ENVIRONMENT, HIS UTTERANCES, IN THEMSELVES, DO NOT INDICATE THAT THE RESPONDENT HAD DETERMINED NOT TO REACH ANY SETTLEMENT WITH THE APPLICANT. RATHER, IN ORDER TO ASSESS THE ATTITUDE OF THE RESPONDENT ONE MUST LOOK AS WELL TO THE CONDUCT OF PAMMETT AND HIS ASSOCIATES.

20. THIS BRINGS US TO THE EVENTS OF AND SURROUNDING THE MEETING BETWEEN THE PARTIES ON MAY 13TH. FOR REASONS INDICATED ABOVE, WE DO NOT ACCEPT THE ASSERTION OF COUNSEL FOR THE APPLICANT THAT DESPITE EXCESSES IN THE EARLIER MONTHS OF THE STRIKE, ONCE THOSE ACTIVITIES WERE CURTAILED BY LEGAL ACTION AND PARTICULARLY IN THE PERIOD AFTER FEBRUARY 25TH, AN ATMOSPHERE OR RELATIVE NORMALCY PREVAILED BETWEEN THE PARTIES. ON THE CONTRARY, IN OUR VIEW, THE MAY 13TH MEETING TOOK PLACE IN AN ATMOSPHERE OF LINGERING ANTAGONISM.

21. AS WAS SUGGESTED IN THE NEW METHOD LAUNDRY AND DRY CLEANERS CASE (SUPRA) AND MORE EXPLICITLY SPELLED OUT IN THE SUPERIOR BOX COMPANY LIMITED CASE (1961) CCH CLLC 1960-1964 ¶16,188, ONE OF THE FACTORS TO BE TAKEN INTO ACCOUNT IN DETERMINING THE OBLIGATION OF THE EMPLOYER TO BARGAIN IS WHETHER THE UNION, IN REQUESTING THE EMPLOYER TO MEET, HAS INDICATED THAT IT IS PREPARED TO MAKE SIGNIFICANT CONCESSIONS FROM THE DEMANDS IT MADE PRIOR TO TAKING STRIKE ACTION. COUNSEL FOR THE APPLICANT ARGUES THAT THE PROPOSALS SET FORTH IN SKURJAT'S LETTER OF APRIL 28TH REPRESENT SIGNIFICANT CONCESSIONS BY THE APPLICANT FROM ITS PREVIOUS POSITION. COUNSEL FURTHER ARGUES THAT IN REJECTING THE CONCESSIONS CONTAINED IN THE APPLICANT'S PROPOSALS AT THE MAY 13TH MEETING, THE RESPONDENT DEMONSTRATED ITS UNWILLINGNESS TO BARGAIN IN GOOD FAITH.

22. SINCE THE RESPONDENT DID ATTEND THE MEETING ON MAY 13TH AS REQUESTED BY THE APPLICANT AND DID DISCUSS ALL OF THE MATTERS OUTLINED IN SKURJAT'S LETTER OF APRIL 28TH, THERE IS NO NEED FOR THE BOARD TO DECIDE WHETHER THE PROPOSALS ADVANCED BY THE APPLICANT, IN FACT, REPRESENT SIGNIFICANT CONCESSIONS. IT IS NECESSARY, HOWEVER, FOR THE BOARD TO DEAL WITH THE LATTER ARGUMENT OF COUNSEL FOR THE APPLICANT, NAMELY, THAT THE REJECTION OF THE APPLICANT'S PROPOSALS IS EVIDENCE IN ITSELF OF BAD FAITH BARGAINING BY THE RESPONDENT.

23. AS WAS NOTED EARLIER THERE IS A CONFLICT IN THE EVIDENCE AS TO THE AGREEMENT REACHED BY THE PARTIES ON UNION SECURITY AT THE NOVEMBER 12TH MEETING. VIEWING THAT EVIDENCE IN THE LIGHT MOST FAVOURABLE TO THE POSITION OF THE APPLICANT, THERE WAS A GENUINE MISUNDERSTANDING BETWEEN THE PARTIES ON NOVEMBER 12TH ON UNION SECURITY WHICH ONLY BECAME APPARENT AT THE MEETING ON MAY 13TH. THE BOARD IS SATISFIED THAT THE RESPONDENT REASONABLY AND TRULY BELIEVED THAT THE APPLICANT'S PROPOSAL ON UNION SECURITY AS OUTLINED IN ITS LETTER OF APRIL 28TH WAS MORE STRINGENT THAN THE ONE PREVIOUSLY AGREED UPON BY THE PARTIES. IN THESE CIRCUMSTANCES, THE RESPONDENT CAN HARDLY BE ACCUSED OF FAILING TO BARGAIN IN GOOD FAITH WHEN IT REJECTED THE PROPOSAL.

24. THE REAL ISSUE BETWEEN THE PARTIES AT THE MAY 13TH MEETING, HOWEVER, WAS THE QUESTION OF THE RECALL OF THE STRIKING EMPLOYEES. THE EVIDENCE REVEALS THAT THE RESPONDENT DID NOT FLATLY REJECT THE APPLICANT'S PROPOSAL FOR THE RECALL OF THE STRIKING EMPLOYEES. RATHER, THE RESPONDENT MADE ITS OWN COUNTER-PROPOSAL, NAMELY TO RECALL FIVE STRIKING EMPLOYEES WITHIN A SPECIFIED PERIOD. THE FACT THAT THE RESPONDENT WAS NOT PREPARED AT THAT TIME TO REVEAL THE NAMES OF THE PERSONS CONCERNED DID NOT MAKE IT SUCH AN INCOMPLETE PROPOSAL, AS WAS ARGUED BY COUNSEL FOR THE APPLICANT, THAT THE UNION COULD NOT ACCEPT IT. IF THE APPLICANT HAD BEEN PREPARED TO ACCEPT THE RESPONDENT'S PROPOSAL IN PRINCIPLE, SURELY THE IDENTITY OF THE PERSONS WHO WOULD BE RECALLED COULD HAVE BEEN THE SUBJECT FOR FURTHER NEGOTIATIONS. WE WOULD MENTION THAT THE RESPONDENT WAS PREPARED TO INCLUDE AMONG THE FIVE, LILLIAN DOWNER, THE CHAIRMAN OF THE APPLICANT'S STRIKE COMMITTEE.

25. WE ARE SATISFIED THAT THE RESPONDENT'S REFUSAL TO MAKE ANY COMMITMENT ON THE RECALL OF THE REMAINDER OF THE STRIKING EMPLOYEES WAS NOT A DELIBERATE ATTEMPT BY THE RESPONDENT TO PLACE THE APPLICANT IN SUCH A POSITION THAT IT COULD NOT ACCEPT THE RESPONDENT'S PROPOSAL FOR THE RECALL OF STRIKING EMPLOYEES, AS WAS ARGUED BY COUNSEL FOR THE APPLICANT. RATHER, THE EVIDENCE REVEALS THAT DURING THE COURSE OF THE STRIKE THE RESPONDENT HAD FILLED THE PLACES OF THE STRIKERS AND HAD NO WORK AVAILABLE AT THAT TIME FOR THE STRIKING EMPLOYEES.

ALSO WE DO NOT ACCEPT THE SUBMISSION OF COUNSEL FOR THE APPLICANT THAT, IN TAKING THE POSITION IT DID ON THE RECALL OF THE STRIKING EMPLOYEES, THE RESPONDENT FAILED TO MEET ITS LEGAL OBLIGATION OR THAT, AT LEAST, AN ARGUABLE QUESTION IS RAISED AS TO WHETHER THE RESPONDENT FULFILLED ITS OBLIGATION UNDER THE LAW. COUNSEL CITED NO JUDICIAL AUTHORITY IN SUPPORT OF HIS SUBMISSION. SIGNIFICANTLY, THE SOLE AUTHORITY CITED TO THE BOARD (AND IT IS THE ONLY AUTHORITY OF WHICH THE BOARD IS AWARE) CLEARLY LENDS SUPPORT TO QUITE THE CONTRARY SUBMISSION TO THAT MADE BY COUNSEL FOR THE APPLICANT (SEE JUDGMENT IN SUPREME COURT OF CANADA OF LOCKE J. IN C.P.R. Co. v. ZAMBRI [1962] 34 DLR (2D) 654). IN ANY EVENT, WE DO NOT INTERPRET THE POSITION TAKEN BY THE RESPONDENT ON THIS ISSUE AS A FAILURE TO BARGAIN IN GOOD FAITH.

26. COUNSEL FOR THE APPLICANT ALSO SUBMITS THAT THE RESPONDENT'S PROPOSAL CONCERNING THE SENIORITY RIGHTS OF THE STRIKING EMPLOYEES WHOM IT WAS PREPARED TO RECALL AND THOSE OF THE NEW EMPLOYEES WHOM IT HIRED DURING THE STRIKE DISCRIMINATES AGAINST THE STRIKING EMPLOYEES IN CONTRAVENTION OF SECTION 50(A) OF THE ACT. COUNSEL ASSERTS THAT IN MAKING SUCH AN UNLAWFUL PROPOSAL THE RESPONDENT DEMONSTRATED ITS BAD FAITH IN BARGAINING.

27. WE WOULD FIRST POINT OUT THAT THE QUESTION OF SENIORITY RIGHTS AS BETWEEN THE STRIKING EMPLOYEES AND THE NEW EMPLOYEES WAS NOT INCLUDED IN THE APPLICANT'S PROPOSAL FOR THE RECALL OF THE STRIKING EMPLOYEES AS SET OUT IN ITS LETTER OF APRIL 28TH. NEITHER WAS IT PART OF THE RESPONDENT'S PROPOSAL. INDEED NO REAL PROPOSALS WERE MADE BY EITHER PARTY ON THIS QUESTION. RATHER GROWING OUT OF THE CONVERSATION BETWEEN THE PARTIES ON THEIR PROPOSALS FOR THE RECALL OF THE STRIKING EMPLOYEES A HYPOTHETICAL DISCUSSION ENSUED AS TO WHAT WOULD HAPPEN AS BETWEEN FORMER STRIKERS AND NEW EMPLOYEES IN THE EVENT OF A LAY-OFF. NEITHER PARTY TOOK A FIRM POSITION NOR DID THEY SERIOUSLY ATTEMPT TO REACH A DEFINITE SETTLEMENT ON THE MATTER.

28. LET US ASSUME, HOWEVER, FOR PURPOSES OF ARGUMENT THAT THE RESPONDENT HAD MADE A FIRM PROPOSAL THAT THE NEW EMPLOYEES HIRED SINCE THE STRIKE BEGAN WOULD HAVE SENIORITY OVER ANY STRIKING EMPLOYEES WHO WERE RECALLED. LET US FURTHER ASSUME FOR PURPOSES OF ARGUMENT THAT THE PROPOSAL WAS A VIOLATION OF SECTION 50(A) OF THE ACT AND WAS UNLAWFUL. AT THE MEETING ON MAY 13TH THE APPLICANT MADE NO OBJECTIONS TO THE PROPOSAL ON THE GROUNDS THAT IT WAS UNLAWFUL, NOR WAS ANY SUCH OBJECTION REGISTERED THEREAFTER. IN FACT, THE RESPONDENT WAS CONFRONTED WITH THIS OBJECTION FOR THE FIRST TIME DURING COUNSEL FOR THE APPLICANT'S ARGUMENT AT THE BOARD HEARING. IN OUR VIEW, IF THE APPLICANT THOUGHT THAT THE PROPOSAL WAS UNLAWFUL IT WAS INCUMBENT UPON IT TO

RAISE THAT OBJECTION AT THE TIME AND MAKE SOME REASONABLE EFFORT TO SETTLE THE MATTER. THIS WAS NOT DONE. A SIMILAR SITUATION EXISTED IN THE McPHERSON WAREHOUSING COMPANY LIMITEC CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1965, P. 583. THE BOARD IN THAT CASE HELD THAT IT WAS ONLY AFTER THE ALLEGED UNLAWFUL PROPOSAL WAS DEALT WITH IN BARGAINING THAT THE BOARD WAS IN A POSITION TO SCRUTINIZE THE CONDUCT OF THE PARTIES TO DETERMINE WHETHER THERE HAS BEEN BARGAINING IN GOOD FAITH. WE ADOPT THE SAME REASONING IN THE INSTANT CASE.

29. IT IS NOT WITHOUT RELEVANCE TO MENTION THE FACT THAT SKURJAT AT THE CONCLUSION OF THE MEETING ON MAY 13TH AGREED TO CONSIDER AND INFORM HIS COMMITTEE OF THE POSITION TAKEN BY THE RESPONDENT AND TO REPORT BACK TO PAMMETT. HE ALSO RAISED THE POSSIBILITY OF A FURTHER MEETING WITH THE RESPONDENT. MOREOVER, WHEN HE REPORTED BACK TO PAMMETT THAT THE COMMITTEE HAD REJECTED THE RESPONDENT'S PROPOSAL ON THE RECALL OF THE STRIKING EMPLOYEES HE ADMITTED HIMSELF THAT AT THAT TIME HE STILL HOPED TO PERSUADE PAMMETT TO CHANGE HIS POSITION. ONE WOULD NOT EXPECT A PARTY AT A NEGOTIATING SESSION OPENLY TO ACCUSE THE OTHER PARTY TO THE NEGOTIATIONS OF BAD FAITH BARGAINING. HOWEVER THAT MAY BE, THE APPLICANT'S CONDUCT AT AND AFTER THE MEETING DOES NOT APPEAR TO US TO BE CONSISTENT WITH ITS SUBSEQUENT ALLEGATION THAT AT THE MAY 13TH MEETING THE RESPONDENT WAS BARGAINING IN BAD FAITH.

30. IN OUR VIEW, IF THE APPLICANT EXPECTED TO REACH A COMPLETE SETTLEMENT ON ALL THE ISSUES SEPARATING THE PARTIES AT THE RELATIVELY SHORT MEETING ON MAY 13TH, WHICH TOOK PLACE AT A TIME WHEN A STRIKE, MARKED BY UNUSUAL RANCOUR, HAD BEEN IN PROGRESS FOR FIVE MONTHS, SUCH AN EXPECTATION WAS UNREALISTIC. WHILE THE PARTIES DID NOT SETTLE ANY ISSUES AT THE MEETING, THE EVIDENCE SHOWS THAT THERE WAS A FRANK EXCHANGE OF VIEWS. ALTHOUGH IT IS MERE SPECULATION, IT IS CONCEIVABLE THAT SOME REAL PROGRESS TOWARDS A SETTLEMENT MIGHT HAVE BEEN MADE IF THE PARTIES HAD CONTINUED THE DIALOGUE THAT THEY BEGAN ON MAY 13TH, AT A SUBSEQUENT MEETING OR MEETINGS. THE POSSIBILITY OF FURTHER MEETINGS, WE WOULD ADD, WAS NOT RULED OUT BY THE RESPONDENT. THE APPLICANT, HOWEVER, MADE NO FURTHER EFFORT TO COMMUNICATE WITH THE RESPONDENT AFTER SKURJAT'S CONVERSATION WITH PAMMETT ON MAY 14TH, AND THREE DAYS LATER FILED THE INSTANT APPLICATION.

31. HAVING CAREFULLY CONSIDERED ALL OF THE EVIDENCE RELATING TO THE CONDUCT OF THE RESPONDENT AND THE ABLE ARGUMENTS OF COUNSEL FOR BOTH PARTIES, IT IS OUR CONCLUSION THAT THE APPLICANT HAS FAILED TO SATISFY THE BOARD THAT THERE IS SUFFICIENT EVIDENCE TO WARRANT THE GRANTING OF CONSENT TO THE APPLICANT TO INSTITUTE A PROSECUTION OF THE RESPONDENT FOR FAILING TO BARGAIN IN GOOD FAITH IN CONTRAVENTION OF SECTION 12 OF THE ACT.

32. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

DECISION OF BOARD MEMBER E. BOYER: (SEPTEMBER 23, 1966).

I DISSENT.

IN MY OPINION, THE RESPONDENT'S POSITION ON MAY 13TH, 1966, THAT IT WOULD ONLY RECALL FIVE OF THE STRIKING EMPLOYEES, WHOM IT WOULD NOT IDENTIFY, AND ITS REFUSAL TO MAKE ANY COMMITMENT REGARDING THE REMAINDER OF THE STRIKING EMPLOYEES, RAISES AN ARGUABLE QUESTION OF LAW AS TO WHETHER SUCH A PROPOSAL CONSTITUTES BARGAINING IN GOOD FAITH.

ACCORDINGLY, I WOULD GRANT CONSENT TO THE APPLICANT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR THE ALLEGED OFFENCE OF FAILING TO BARGAIN IN GOOD FAITH IN CONTRAVENTION OF SECTION 12 OF THE ACT.

INDEXED ENDORSEMENT - SECTION 65

12063-66-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. DREW BROWN LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: LORNE INGLE AND OTTO URBANOVICS FOR THE COMPLAINANT, B. W. BINNING AND H. W. LANGLANDS FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN: (SEPTEMBER 9, 1966)

1. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT.

2. THE EVIDENCE CALLED BY BOTH PARTIES IN THIS MATTER LEAVES SOMETHING TO BE DESIRED. HOWEVER, ON THE BASIS OF ALL THE EVIDENCE AND HAVING REGARD TO THE Demeanour OF THE WITNESSES IN THE WITNESS BOX, THE MANNER IN WHICH THEY GAVE THEIR EVIDENCE, AND HAVING ASSESSED THE CREDIBILITY OF THE WITNESSES, WE FIND THAT THE COMPLAINANT HAS NOT MET THE ONUS OF ESTABLISHING THAT THE DISCHARGES WERE CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. ACCORDINGLY, WE ARE NOT SATISFIED THAT THE AGGRIEVED PERSONS WERE DISCHARGED OR OTHERWISE DEALT WITH CONTRARY TO THE ACT AS ALLEGED BY THE COMPLAINANT.

3. THE COMPLAINT IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER E. BOYER: (SEPTEMBER 9, 1966)

I DISSENT. HAVING REGARD TO THE CREDIBILITY OF THE WITNESSES, I WOULD ACCEPT THE EVIDENCE OF THE COMPLAINANT'S WITNESSES AND WOULD FIND THAT THE AGGRIEVED PERSONS WERE DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT. I WOULD ACCORDINGLY HAVE REINSTATED THE PERSONS IN THEIR EMPLOYMENT WITH COMPENSATION FOR LOSS OF EARNINGS.

INDEXED ENDORSEMENTS - SECTION 79(2)

11802-66-M: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, LOCAL 743 (APPLICANT) V. DUNLOP CANADA LIMITED (WHITBY) (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: ED. A. JARVIS, PAUL SPENCER, LLOYD BURTON AND L. A. MACLEAN FOR THE APPLICANT, AND C. A. MORLEY AND J. J. RANSON FOR THE RESPONDENT.

DECISION OF THE BOARD: (SEPTEMBER 14, 1966)

1. THIS IS AN APPLICATION FOR RELIEF PURSUANT TO SECTION 79(2) OF THE LABOUR RELATIONS ACT. THE APPLICANT SEEKS THE DECISION OF THE BOARD AS TO WHETHER CERTAIN PERSONS ARE EMPLOYEES WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.
2. THERE HAS BEEN A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE PARTIES AND NEGOTIATIONS FOR ITS RENEWAL HAVE TAKEN PLACE, ALTHOUGH THE RENEWAL AGREEMENT HAD NOT, AT THE TIME OF THE HEARING OF THIS MATTER, BEEN SIGNED BY THE PARTIES. COUNSEL FOR THE APPLICANT STATED AT THE HEARING THAT, FOR THE PURPOSE OF DEALING WITH THIS APPLICATION, HE AGREED THAT THE NEW AGREEMENT WAS A COLLECTIVE AGREEMENT AND THAT "THERE IS NOW SOME COLLECTIVE AGREEMENT IN EFFECT".
3. COUNSEL FOR THE APPLICANT SOUGHT TO ADDUCE EVIDENCE TO ESTABLISH THAT, IN THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT AS WELL AS DURING THE PERIOD OF OPERATION OF A COLLECTIVE AGREEMENT, A QUESTION HAS ARISEN AS TO WHETHER CERTAIN PERSONS ARE EMPLOYEES WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. COUNSEL FOR THE RESPONDENT OBJECTED TO THE BOARD'S HEARING SUCH EVIDENCE ON THE GROUND THAT THE BULK OF THE PERSONS CONCERNED HAVE BEEN EXCLUDED FROM THE BARGAINING UNIT. THUS, THE APPLICATION WOULD SERVE NO USEFUL PURPOSE RELATING TO THE BARGAINING RIGHTS OF THE PARTIES. THE BOARD, AFTER HEARING ARGUMENT, RESERVED ITS RULING ON THE OBJECTION AND ADJOURNED THE HEARING PENDING SUCH RULING.
4. WITH RESPECT TO THOSE PERSONS EXCLUDED FROM THE BARGAINING UNIT, THE OBJECTION TAKEN BY COUNSEL FOR THE RESPONDENT MUST SUCCEED FOR REASONS WHICH HAVE BEEN SET FORTH IN THE CITY OF ST. CATHARINES CASE, BOARD FILE NO. 10823-65-M.
5. WITH RESPECT TO THOSE PERSONS APPARENTLY COMING WITHIN THE BARGAINING UNIT, HOWEVER, THE APPLICANT WOULD BE ENTITLED TO THE BOARD'S DETERMINATION OF THE STATUS OF THE PERSONS IN QUESTION, WHERE IT IS SHOWN THAT A QUESTION HAS ARISEN AS CONTEMPLATED BY SECTION 79(2) OF THE ACT. THE APPLICANT IS ENTITLED TO PRESENT EVIDENCE TO SHOW THAT IN FACT SUCH A QUESTION HAS ARISEN. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING, AT WHICH TIME THE BOARD WILL ENTERTAIN EVIDENCE ON THIS ISSUE. THE PARTIES ARE, HOWEVER, REFERRED TO THE BOARD'S DECISION IN THE MANNESMANN TUBE CASE, O.L.R.B. MONTHLY REPORTS, MAY 1966, P. 136.
6. FOLLOWING THE HEARING IN THIS MATTER, IT WAS ALLEGED ON BEHALF OF THE APPLICANT THAT THE DUTIES AND RESPONSIBILITIES OF CERTAIN OF THE PERSONS AFFECTED BY THIS APPLICATION HAVE BEEN CHANGED, WITH THE RESULT THAT SUCH

PERSONS PRESENTLY EXCLUDED FROM THE BARGAINING UNIT OUGHT NOW BE CONSIDERED AS EMPLOYEES WITHIN THE MEANING OF THE ACT. IF IN FACT THE DUTIES OF SUCH PERSONS HAVE CHANGED, THEN IT MAY BE THAT THE BASIS OF THEIR EXCLUSION FROM THE BARGAINING UNIT NO LONGER EXISTS. THE BOARD WILL, THEREFORE, CONSIDER THE QUESTION OF THE NATURE AND EXTENT OF CHANGES IN THE DUTIES AND RESPONSIBILITIES OF SUCH PERSONS. EVIDENCE ON SUCH AN ISSUE WOULD BE HEARD BY AN EXAMINER APPOINTED FOR THAT PURPOSE.

7. THE APPLICANT IN THIS MATTER REQUESTS DETERMINATION OF THE QUESTION WHETHER PERSONS EMPLOYED IN CERTAIN LISTED JOB CLASSIFICATIONS EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY WITH RESPECT TO LABOUR RELATIONS. LIKEWISE, THE ALLEGATIONS THAT THE DUTIES AND RESPONSIBILITIES OF CERTAIN PERSONS HAVE CHANGED ARE MADE WITH RESPECT TO PERSONS IN CERTAIN LISTED JOB CLASSIFICATIONS. ALTHOUGH THE NAMES OF EMPLOYEES AFFECTED BY THIS APPLICATION WERE GIVEN ORALLY TO THE BOARD AT THE HEARING IN THIS MATTER, THE BOARD REQUIRES PRECISE IDENTIFICATION OF THE PERSONS AFFECTED BY THIS APPLICATION AND BY THE RULINGS SET OUT HEREIN, SO THAT IF AN EXAMINER IS TO BE APPOINTED IN THIS MATTER, HIS TERMS OF REFERENCE MAY BE SET OUT WITH PRECISION AND IN ACCORDANCE WITH THE BOARD'S RULINGS. THIS MATTER MAY BE SPOKEN TO AT THE HEARING.

8. THE MATTER IS REFERRED TO THE REGISTRAR.

11892-66-M: LOCAL 545, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TOWNSHIP OF SCARBOROUGH (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGEE.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND C. F. KITCHEN FOR THE APPLICANT, AND JOHN P. SANDERSON AND L. E. FAGAN FOR THE RESPONDENT.

DECISION OF THE BOARD: (SEPTEMBER 1, 1966)

1. THIS IS AN APPLICATION FOR RELIEF PURSUANT TO SECTION 79(2) OF THE LABOUR RELATIONS ACT. THE APPLICANT SEEKS THE DECLARATION OF THE BOARD AS TO WHETHER CERTAIN PERSONS ARE EMPLOYEES OF THE RESPONDENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

2. THERE HAS BEEN A SERIES OF COLLECTIVE AGREEMENTS IN EFFECT BETWEEN THE PARTIES, EXTENDING OVER A PERIOD OF MANY YEARS. THE DESCRIPTION OF THE BARGAINING UNIT, ORIGINALLY AGREED UPON, AT THE TIME OF VOLUNTARY RECOGNITION OF THE APPLICANT BY THE RESPONDENT AS BARGAINING AGENT FOR CERTAIN OF ITS EMPLOYEES, HAS FROM TIME TO TIME BEEN ALTERED AS A RESULT OF NEGOTIATIONS BETWEEN THE PARTIES.

3. THE COLLECTIVE AGREEMENT CURRENTLY IN EFFECT BETWEEN THE PARTIES EXPRESSLY EXCLUDES FROM THE BARGAINING UNIT ALL OF THE PERSONS WITH RESPECT TO WHOM THE APPLICANT NOW SEEKS THE BOARD'S RULING. COUNSEL FOR THE RESPONDENT ARGUES THAT, IN THESE CIRCUMSTANCES, THE APPLICATION SHOULD BE DISMISSED, SINCE, WHATEVER THE EMPLOYMENT STATUS OF THE PERSONS IN QUESTION

MAY BE, THEY WOULD NOT BE INCLUDED IN THE BARGAINING UNIT. THE "QUESTION" AS TO THEIR STATUS WOULD NOT, THEREFORE, BE RELEVANT TO "THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT" OR THE "OPERATION OF A COLLECTIVE AGREEMENT", WHICH ARE THE SITUATIONS WITH WHICH SECTION 79(2) OF THE ACT DEALS. COUNSEL FOR THE APPLICANT, IT MAY BE NOTED, FRANKLY ACKNOWLEDGED THAT THE ULTIMATE GOAL OF THE APPLICANT WAS THE INCLUSION OF THE PERSONS IN QUESTION IN THE BARGAINING UNIT, THROUGH VOLUNTARY RECOGNITION OF THE APPLICANT BY THE RESPONDENT AS BARGAINING AGENT FOR THESE PERSONS.

4. WHERE THE QUESTION ARISES WHETHER A PERSON IS INCLUDED WITHIN A DESCRIBED BARGAINING UNIT, THE BOARD HAS HELD THAT SUCH QUESTIONS ARE MOST APT FOR DETERMINATION BY ARBITRATION, AS CONTEMPLATED BY SECTION 34 OF THE ACT. THE BOARD HAS CLEARLY DISTINGUISHED THIS QUESTION (WHICH DOES NOT ARISE IN THE PRESENT CASE) FROM THE QUESTION WHETHER A PERSON (WHETHER COMING WITHIN THE SCOPE OF A DESCRIBED BARGAINING UNIT OR NOT) IS AN EMPLOYEE WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. SEE THE CANADIAN CAR CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1966, P. 763.

5. THE LATTER QUESTION, "WHETHER A PERSON IS AN EMPLOYEE" IS LEAVING ASIDE THE QUESTION "WHETHER A PERSON IS A GUARD") THE ONLY QUESTION WITH WHICH THE BOARD MAY DEAL IN AN APPLICATION UNDER SECTION 79(2). THIS IS NOT TO SAY, HOWEVER, THAT THE BOARD MUST DECIDE SUCH A QUESTION WHENEVER ANY APPLICANT, ALLEGING SUCH A QUESTION TO HAVE ARISEN, SEEKS TO REFER IT TO THE BOARD. IT IS ONLY WHERE THE QUESTION ARISES "IN THE COURSE OF BARGAINING FOR COLLECTIVE AGREEMENT" OR "DURING THE PERIOD OF OPERATION OF A COLLECTIVE AGREEMENT" THAT IT MAY BE REFERRED TO THE BOARD. COUNSEL FOR THE APPLICANT SOUGHT TO LEAD EVIDENCE TO ESTABLISH THAT THE INSTANT CASE WAS IN FACT A CASE IN WHICH, IN THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT, A QUESTION HAD ARISEN AS TO WHETHER THE PERSONS REFERRED TO IN THE APPLICATION WERE EMPLOYEES. COUNSEL FOR THE RESPONDENT OBJECTED TO THE BOARD'S HEARING SUCH EVIDENCE, ARGUING THAT, SINCE THE PERSONS IN QUESTION WERE EXCLUDED FROM THE BARGAINING UNIT, A DECISION WITH RESPECT TO THEIR STATUS AS EMPLOYEES WOULD NOT BE RELATED TO THE BARGAINING RIGHTS OF THE PARTIES. THE BOARD, AFTER HEARING ARGUMENT, RESERVED ITS RULING ON THE OBJECTION AND ADJOURNED THE HEARING PENDING SUCH RULING.

6. A SIMILAR APPLICATION WAS BEFORE THE BOARD IN THE CITY OF ST. CATHARINES CASE, BOARD FILE NO. 10823-65-M. THE FOLLOWING PORTIONS OF THE BOARD'S DECISION IN THAT CASE MAY USEFULLY BE SET OUT HERE:-

IF THE POSITION OF COUNSEL FOR THE APPLICANT IS WELL TAKEN, IT FOLLOWS THAT, AS LONG AS A BARGAINING RELATIONSHIP IS IN EXISTENCE, ALL THAT A UNION OR AN EMPLOYER NEED DO TO ENTITLE EITHER OF THEM TO MAKE AN APPLICATION UNDER SECTION 79(2) OF THE ACT IS TO SAY TO THE OTHER THAT A CERTAIN NAMED PERSON IS OR IS NOT AN EMPLOYEE AND, OF THE OTHER DISAGREES WITH THAT STATEMENT, AN APPLICATION TO THE BOARD IS IN ORDER. WE CANNOT CONCEIVE THAT IT WAS THE INTENTION OF THE LEGISLATURE, IN USING THE WORDS "ANY QUESTION ARISES" IN SECTION 79(2), TO HAVE THE BOARD ENGAGE IN ACADEMIC EXERCISES. IN OUR OPINION, IT MUST HAVE

BEEN THE INTENTION OF THE LEGISLATURE THAT THE BOARD'S DECISION UNDER THAT SUBSECTION WOULD SERVE SOME USEFUL PURPOSE CONNECTED IN SOME WAY WITH THE BARGAINING RIGHTS OF THE PARTIES. THUS, FOR EXAMPLE, WHERE A DECISION OF THE BOARD AS TO THE STATUS OF CERTAIN PERSONS WOULD ASSIST THE PARTIES IN THE ADMINISTRATION OF A COLLECTIVE AGREEMENT BETWEEN THEM, AN APPLICATION UNDER SECTION 79(2) WOULD APPEAR TO BE AN APPROPRIATE REMEDY.

IT HAS BEEN ARGUED THAT, WHERE A QUESTION HAS ARISEN UNDER A COLLECTIVE AGREEMENT AS TO WHETHER A CERTAIN PERSON IS OR IS NOT COVERED BY THE SCOPE CLAUSE, THE ISSUE IS ONE THAT MUST BE DETERMINED BY ARBITRATION AND NOT BY THE BOARD UNDER SECTION 79(2). ON THE OTHER HAND, IT HAS BEEN ARGUED THAT WHERE THERE IS A LIKELIHOOD THAT THE ARBITRATOR, IN THE COURSE OF HIS CONSIDERATION AS TO WHETHER A PERSON IS COVERED BY THE SCOPE CLAUSE, IS FACED WITH THE QUESTION AS TO WHETHER THAT PERSON IS OR IS NOT AN EMPLOYEE WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT, THAT QUESTION MUST BE REFERRED TO THE BOARD BECAUSE "THE OPINION OF THE BOARD" IS A MATERIAL FACTOR IN ANY DETERMINATION AS TO WHETHER A PERSON EXERCISES "MANAGERIAL" OR "CONFIDENTIAL" AUTHORITY WITHIN THE MEANING OF THE ACT. IT IS NOT NECESSARY FOR THE BOARD IN THIS CASE TO EXPRESS ANY CONCLUSIVE VIEWS AS TO WHICH OF THESE ALTERNATIVES REPRESENTS THE PROPER APPROACH TO THE PROBLEM OR WHETHER THERE IS SOME MIDDLE GROUND. IN THE INSTANT CASE, THE PARTIES HAVE EXPRESSLY AGREED IN THE CERTIFICATION PROCEEDINGS BEFORE THE BOARD, AND THE BOARD ACTING UPON THIS AGREEMENT HAS HELD, THAT SEVEN OF THE PERSONS WITH RESPECT TO WHOM THE APPLICANT IS SEEKING A RULING ARE INCLUDED IN THE BARGAINING UNIT. IN ADDITION, THE PARTIES SUBSEQUENTLY WROTE INTO THEIR AGREEMENT A CLAUSE THAT EXPRESSLY EXCLUDED THEM FROM THE SCOPE OF THE BARGAINING UNIT TO WHICH THE AGREEMENT APPLIES. IT IS OBVIOUS THAT NO QUESTION HAS ARISEN IN THE INSTANT CASE AS TO THE EMPLOYMENT STATUS OF THESE SIX PERSONS THAT IN ANY WAY RELATES TO THE ADMINISTRATION OF THE AGREEMENT. THE SITUATION HERE IS NOT UNLIKE THAT WHICH AROSE IN THE CANADIAN CAR, FORT WILLIAM DIVISION, HAWKER SIDDELEY CANADA CASE (BOARD FILE 10386-65-M), WITH RESPECT TO CERTAIN PERSONS CLASSIFIED AS ENGINEERS-IN-TRAINING.

AGAIN, IN A PROPER CASE, A DECISION OF THE BOARD AS TO THE STATUS OF CERTAIN PERSONS MAY BE OF

ASSISTANCE TO THE PARTIES IN NEGOTIATING A NEW COLLECTIVE AGREEMENT, I.E., WHERE THE EXTENT OF THE BARGAINING RIGHTS THAT THE UNION HAS AT THAT TIME IS IN ISSUE. THE SECTION OUGHT NOT TO BE USED, HOWEVER, TO ENABLE AN APPLICATION TO PAVE THE WAY FOR WHAT IS IN EFFECT A REQUEST FOR VOLUNTARY RECOGNITION OF A UNION AS BARGAINING AGENT FOR A GROUP OF EMPLOYEES NOT PRESENTLY COVERED BY AN AGREEMENT, I.E., AS A SUBSTITUTE FOR A CERTIFICATION APPLICATION. IN ONE SENSE, A QUESTION MAY BE SAID TO ARISE IN SUCH CIRCUMSTANCES AS TO THE STATUS OF CERTAIN PERSONS BUT, IN OUR OPINION, THAT IS NOT THE SENSE IN WHICH THE PHRASE IS USED IN SECTION 79(2) OF THE ACT. WHAT USEFUL PURPOSE IN FURTHERANCE OF BARGAINING FOR A COLLECTIVE AGREEMENT COULD BE SERVED BY A DETERMINATION OF THIS BOARD AS TO THE STATUS OF THE SEVEN PERSONS HERE UNDER CONSIDERATION? THE ONLY PURPOSE THAT READILY COMES TO MIND IS THAT THE UNION MIGHT SEEK TO HAVE THE EMPLOYER AGREE TO WIDEN THE SCOPE OF THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT TO INCLUDE ANY OF THE PERSONS WHOM WE MIGHT FIND TO BE EMPLOYEES, HOWEVER, THE UNION COULD NOT INSIST ON THEIR INCLUSION IN THE AGREEMENT AS A MATTER OF RIGHT. THE UNION IS NOT WITHOUT REMEDY; IT COULD APPLY TO THE BOARD TO BE CERTIFIED AS BARGAINING AGENT ON BEHALF OF SUCH PERSONS AND, ON AN APPLICATION OF THAT NATURE, THE UNION WOULD LEGITIMATELY BE ENTITLED TO A RULING AS TO THEIR STATUS.

7. IN THE CITY OF ST. CATHARINES CASE, THE BOARD DID, IN THE RESULT, APPOINT AN EXAMINER WITH RESPECT TO CERTAIN PERSONS WHOSE DUTIES THE APPLICANT ALLEGED TO HAVE BEEN CHANGED, SO THAT THERE WAS A REAL ISSUE BETWEEN THE PARTIES AS TO WHETHER THESE PERSONS FELL WITHIN THE SCOPE OF THE BARGAINING UNIT OR NOT, AND SINCE THE PARTIES WERE EMBARKING ON THE NEGOTIATION OF A NEW COLLECTIVE AGREEMENT, THE APPLICANT WAS ENTITLED TO HAVE THE STATUS OF THESE PERSONS DETERMINED BY THE BOARD. NO SUCH ISSUE ARISES IN THE INSTANT CASE.

8. IN OUR VIEW, THE REASONS SET OUT IN THE EXCERPT FROM THE CITY OF ST. CATHARINES CASE ABOVE APPLY PRECISELY TO THE CIRCUMSTANCES OF THE INSTANT CASE. IT IS CLEAR THAT THE PURPOSE OF THE APPLICATION IS TO PAVE THE WAY FOR VOLUNTARY RECOGNITION OF THE APPLICANT AS BARGAINING AGENT FOR A GROUP OF EMPLOYEES FOR WHOM IT IS NOT NOW THE BARGAINING AGENT. SUCH AN APPLICATION IS NOT CONTEMPLATED BY SECTION 79(2) OF THE ACT. IT WOULD NOT BE OUT OF PLACE TO REITERATE WHAT THE BOARD SAID IN THE COUSE OF ITS REASONS IN THE CITY OF ST. CATHARINES CASE: THE UNION IS NOT WITHOUT REMEDY; IT COULD APPLY TO THE BOARD TO BE CERTIFIED AS BARGAINING AGENT ON BEHALF OF

SUCH PERSONS, AND ON AN APPLICATION OF THAT NATURE THE UNION WOULD LEGITIMATELY BE ENTITLED TO A RULING AS TO THEIR STATUS.

9. THE OBJECTION OF COUNSEL FOR THE RESPONDENT MUST BE UPHELD. THE APPLICATION IS DISMISSED.

INDEXED ENDORSEMENT - SECTION 79A

12150-66-M: CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 983 (TRADE UNION) v. THE HYDRO ELECTRIC COMMISSION OF THE TOWNSHIP OF NEPEAN (EMPLOYER)

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. W. FORGIE.

APPEARANCES AT THE HEARING: MARIO HIKL AND E. A. GILCHRIST FOR THE TRADE UNION, WALTER D. BAKER AND JOSEPH COTTERILL FOR THE EMPLOYER.

DECISION OF THE BOARD: (SEPTEMBER 27, 1966)

1. THE MINISTER HAS REFERRED TO THE BOARD PURSUANT TO THE PROVISIONS OF SECTION 79A OF THE LABOUR RELATIONS ACT THE QUESTION WHETHER THERE IS IN EXISTENCE A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT BINDING THE PARTIES.
2. THERE IS SUBSTANTIAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE FACTS OF THIS CASE. CANADIAN UNION OF PUBLIC EMPLOYEES (HEREINAFTER REFERRED TO AS CUPE) WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE EMPLOYER ON DECEMBER 21ST, 1965.
3. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 983 (HEREINAFTER REFERRED TO AS LOCAL 983), WHOSE MEMBERS AND OFFICERS WERE ALL EMPLOYEES OF THE EMPLOYER, WAS CHARTERED BY CUPE AND THE EXECUTIVE OF LOCAL 983 WERE ADVISED BY A LETTER DATED MAY 16TH, 1966 FROM THE NATIONAL SECRETARY-TREASURER OF CUPE THAT THE CHARTER OF LOCAL 983 HAD BEEN GIVEN TO A CUPE REPRESENTATIVE FOR PRESENTATION TO LOCAL 983. IT APPEARS FROM THE EVIDENCE THAT IT WAS THE PRACTICE OF CUPE TO FORMALLY INSTALL THE CHARTER WITH THE LOCAL AT THE TIME A COLLECTIVE AGREEMENT WAS NEGOTIATED AND READY TO BE EXECUTED. IN THE INSTANT CASE, THE CHARTER OF LOCAL 983 WAS NEVER INSTALLED BY A DULY AUTHORIZED REPRESENTATIVE OF CUPE, PURSUANT TO THE PROVISIONS OF APPENDIX B, ARTICLE 1, SECTION 1 OF THE CONSTITUTION OF CUPE.
4. FOLLOWING CERTIFICATION OF CUPE AS BARGAINING AGENT A REPRESENTATIVE OF CUPE ACCOMPANIED BY OFFICERS OF LOCAL 983 AS A BARGAINING COMMITTEE MET WITH REPRESENTATIVES OF THE EMPLOYER ON FIFTEEN OCCASIONS IN AN ATTEMPT TO NEGOTIATE A COLLECTIVE AGREEMENT. AT THE FINAL MEETING ON JUNE 27TH, 1966 WHICH WAS ATTENDED BY E. A. GILCHRIST THE NATIONAL REPRESENTATIVE OF CUPE AND OTHER MEMBERS OF THE BARGAINING COMMITTEE, THE NEGOTIATIONS BROKE DOWN AND THE PARTIES WERE UNABLE TO REACH AGREEMENT ON THREE ISSUES WHICH WERE WAGES. OVERTIME AND COMPULSORY ARBITRATION OF FUTURE COLLECTIVE AGREEMENTS.

MR. GILCHRIST ADVISED THE RESPONDENT THAT CUPE WAS NOT ABLE TO AGREE TO THE COMPULSORY ARBITRATION PROVISION AND WAS THEREFORE FORCED TO APPLY FOR CONCILIATION SERVICES. APPARENTLY, THE MEMBERSHIP HAD APPROVED THIS ACTION BY MR. GILCHRIST AT A MEETING APPROXIMATELY ONE WEEK EARLIER. MR. BURWELL WHO WAS VICE-PRESIDENT OF LOCAL 983 AND MR. CROSS WHO WAS SECRETARY-TREASURER OF LOCAL 983 WERE MEMBERS OF THE BARGAINING COMMITTEE WHO WERE PRESENT AT THE MEETING ON JUNE 27TH. SUBSEQUENT TO THE MEETING MR. CROSS AND MR. BURWELL CALLED A MEMBERSHIP MEETING OF LOCAL 983 AT WHICH IT WAS DECIDED THAT, PROVIDING AGREEMENT COULD BE REACHED WITH RESPECT TO THE ISSUES OF WAGES AND OVERTIME, THE MEMBERS WOULD AGREE TO THE COMPULSORY ARBITRATION PROVISION. NO OFFICIAL OF CUPE WAS PRESENT AT THE MEMBERSHIP MEETING. ON JUNE 28TH, AT THE REQUEST OF MR. CROSS, THE EMPLOYER'S NEGOTIATING TEAM MET WITH MR. CROSS AND MR. BURWELL AND RESOLVED THE ISSUES CONCERNING WAGES, OVERTIME AND COMPULSORY ARBITRATION AND IT WAS AGREED THAT THE EMPLOYER WOULD ENGROSS A COLLECTIVE AGREEMENT IN ACCORDANCE WITH THEIR UNDERSTANDING. CUPE WAS NOT ADVISED OF THE MEETING HELD ON JUNE 28TH AND NO OFFICIAL OF CUPE WAS PRESENT AT THAT MEETING.

5. A REQUEST FOR THE APPOINTMENT OF A CONCILIATION OFFICER WAS MADE BY CUPE ON BEHALF OF CUPE AND ITS LOCAL 983 ON JUNE 28TH, 1966.

6. WHEN CUPE BECAME AWARE OF WHAT HAD TRANSPIRED AT THE MEETING ON JUNE 28TH, 1966 A LETTER WAS WRITTEN TO MR. CROSS THE SECRETARY OF LOCAL 983 WHEREIN CUPE ADVISED MR. CROSS THAT HE HAD "NO AUTHORITY TO SIGN AN AGREEMENT BEARING THE NAME OF THE CANADIAN UNION OF PUBLIC EMPLOYEES". ON JULY 5TH, 1966 CUPE SENT A TELEGRAM TO THE EMPLOYER WHICH READS IN PART AS FOLLOWS:

I WISH TO ADVISE THAT NO EMPLOYEE OF THE NAPEAN
HYDRO COMMISSION IS AUTHORIZED TO SIGN A
COLLECTIVE AGREEMENT ON BEHALF OF THE CANADIAN
UNION OF PUBLIC EMPLOYEES WHICH IS THE CERTIFIED
SOLE AND EXCLUSIVE BARGAINING AGENT FOR THESE
EMPLOYEES. LETTER FOLLOWS.

THE LETTER REFERRED TO IN THE TELEGRAM WAS RECEIVED BY THE EMPLOYER ON JULY 6TH, 1966.

7. FOLLOWING THE RECEIPT OF THE TELEGRAM FROM CUPE, THE EMPLOYER ON THE EVENING OF JULY 5TH, 1966, EXECUTED A DOCUMENT WHICH PURPORTS TO BE A COLLECTIVE AGREEMENT BETWEEN THE EMPLOYER AND "THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL UNION NUMBER 983, CHARTERED BY THE CANADIAN UNION OF PUBLIC EMPLOYEES, AND AFFILIATED WITH THE CANADIAN LABOUR CONGRESS HEREINAFTER CALLED THE UNION". THE AGREEMENT WAS SIGNED ON BEHALF OF THE UNION AS FOLLOWS: "LOCAL UNION NUMBER 983" AND BEARS THE SIGNATURE OF THE PRESIDENT AND SECRETARY OF LOCAL 983. FOR THE PURPOSES OF ARGUMENT AT THE HEARING OF THIS CASE THE UNION AGREED THAT IF THE PERSONS WHO SIGNED THE AGREEMENT HAD THE AUTHORITY OF CUPE TO EXECUTE THE AGREEMENT THE DOCUMENT WOULD CONSTITUTE A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE ACT.

8. IN HIS TESTIMONY MR. CROSS ACKNOWLEDGED THAT THE OFFICERS OF LOCAL 983 HAD NO AUTHORITY TO BIND CUPE. WHATEVER MAY HAVE BEEN THE UNDERSTANDING

OF THE EMPLOYER DURING NEGOTIATIONS WITH RESPECT TO THE AUTHORITY OF THE OFFICERS OF LOCAL 983 TO BIND CUPE BY A COLLECTIVE AGREEMENT, THERE COULD BE NO DOUBT, FOLLOWING THE RECEIPT OF THE TELEGRAM ON JULY 5TH, 1966, THAT THE OFFICERS OF LOCAL 983 WERE NOT AUTHORIZED TO SIGN A COLLECTIVE AGREEMENT ON BEHALF OF CUPE.

9. WHILE IT MAY BE THAT CUPE INTENDED THAT A COLLECTIVE AGREEMENT BETWEEN THE EMPLOYER AND THE UNION WOULD BE EXECUTED ON BEHALF OF CUPE AND ITS LOCAL 983, THE FACT REMAINS THAT CUPE AND ONLY CUPE WAS THE EXCLUSIVE BARGAINING AGENT FOR THE EMPLOYEES OF THE EMPLOYER PURSUANT TO THE PROVISIONS OF THE CERTIFICATE ISSUED BY THE BOARD REFERRED TO ABOVE. WHILE THE TERMS OF THE AGREEMENT DATED JULY 5TH, 1966 MIGHT MEET WITH THE APPROVAL OF ALL OF THE EMPLOYEES OF THE EMPLOYER CUPE AND ONLY CUPE IS ENTITLED TO BARGAIN ON BEHALF OF THE EMPLOYEES AND ENTER INTO A COLLECTIVE AGREEMENT WITH THE EMPLOYER WITH RESPECT TO THE EMPLOYEES.

10. IN THE INSTANT CASE CUPE WAS NOT A PARTY TO THE AGREEMENT DATED JULY 5TH, 1966 WITH THE EMPLOYER AND THE EMPLOYER WAS WELL AWARE THAT CUPE WAS NOT IN ACCORD WITH SOME OF THE PROVISIONS OF THE AGREEMENT AND WAS FURTHER AWARE PRIOR TO THE EXECUTION OF THE AGREEMENT, AS WERE THE EMPLOYEES WHO SIGNED THE AGREEMENT ON BEHALF OF LOCAL 983, THAT SUCH EMPLOYEES, WHILE OFFICERS OF LOCAL 983, HAD NO AUTHORITY TO BIND CUPE. IN THESE CIRCUMSTANCES THE BOARD MUST FIND THAT THE AGREEMENT DATED JULY 5TH, 1966 WAS NOT SIGNED BY OR ON BEHALF OF CUPE AND IS ACCORDINGLY NOT BINDING UPON CUPE.

11. ONLY CUPE IS A TRADE UNION WHICH REPRESENTS THE EMPLOYEES OF THE EMPLOYER SINCE IT IS THE EXCLUSIVE BARGAINING AGENT FOR SUCH EMPLOYEES PURSUANT TO THE PROVISIONS OF THE CERTIFICATE ISSUED BY THE BOARD. IT THEREFORE FOLLOWS THAT LOCAL 983 IS NOT A TRADE UNION "WHICH REPRESENTS EMPLOYEES OF THE EMPLOYER" WITHIN THE MEANING OF SECTION 1(1)(c) OF THE ACT. WHILE THE OFFICERS OF LOCAL 983 PURPORTED TO EXECUTE AN AGREEMENT ON BEHALF OF LOCAL 983 AND WHILE THE EMPLOYEES MAY BE SATISFIED WITH ITS TERMS, THE DOCUMENT DATED JULY 5TH, 1966 IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE ACT, SINCE LOCAL 983 IS NOT A TRADE UNION "WHICH REPRESENTS EMPLOYEES OF THE EMPLOYER" AS REQUIRED BY SECTION 1(1)(c).

12. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER IS THEREFORE "No". THERE IS NOT IN EXISTENCE A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT BINDING UPON THE CANADIAN UNION OF PUBLIC EMPLOYEES OR ITS LOCAL 983.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION

12044-66-U: CRUMP SHEET METALS LIMITED (APPLICANT) v. PETER KASKEY, DONALD McMACHEN, ARTHUR BODEN, JAMES E. HUGHES, JOHN BOWIE, RICHARD T. WOOD, A. BONNARD, KEITH YAKELEY, LARRY L. MYERS, WILLIAM LYMAN, JACQUES ROBITAILLE, WILLIAM WALLACE MAY, JOHN BATZ, JAMES TAYLOR, O. ZANNESE, WILLIAM GOUGH, ALFRED J. COMPTON, NORMAN CLIFF, HARRY BERGA, JOSEPH HAWKINS, R. BELISLE, E. ROBINSON, GEORGE BOUDAH, BERT PELL, FRED MASON, DAVID J. MONTGOMERY, WALTER PENDRIGH, ROBERT CORKEN, ALLAN F. BUDWAY, VICTOR BLACKWELL, PATRICK WILLIAMS, JAMES V. AGNEW, DONALD EAMES, WALTER A. SILVER, N. HAGHEY, A. STEWART, RONALD SCOTT, NEIL PRICE, WILLIS NEWTON, T. HANNIGAN, O. FLETCHER, ALBERT RENTON, MR. L. WILLIAMS, ROY FOX, WILLIAM FARLEY, TOM MAXWELL, TED MAJOR, A. LAMOUREUX, R. CAPPADOCIA, JOHN PAUL COOK, WILLIAM FARRELL, W. E. M. HARRISON, PATRICK J. DONOVAN, F. BAHR.(RESPONDENTS).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN AND BOARD MEMBERS
G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (SEPTEMBER 1, 1966).

1. THE RESPONDENTS HAVE REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF JULY 29, 1966. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE RESPONDENTS IN THEIR LETTERS OF AUGUST 16 AND AUGUST 30, 1966, AND THOSE OF THE APPLICANT IN ITS LETTER OF AUGUST 25, 1966.

2. IN THEIR LETTER OF AUGUST 16, 1966, THE RESPONDENTS STATED THAT SUBSEQUENT TO THE HEARING THEY BECAME AWARE OF THE FACT THAT APPROXIMATELY 10 SHEET METAL WORKERS CONTINUED IN THE EMPLOY OF THE APPLICANT ON JULY 20, 1966 AND REQUEST THAT THE BOARD CONSIDER THIS FACT IN MAKING ITS DECISION HEREIN. EVIDENCE OFFERED AT THE HEARING INDICATED THAT SOME SHEET METAL WORKERS HAD REMAINED ON THE JOB ON THE DATE IN QUESTION. THE BOARD WAS AWARE OF THIS EVIDENCE AT THE TIME IT MADE ITS DECISION AND, IN ANY EVENT, NONE OF THE EMPLOYEES WHO REMAINED AT WORK WERE NAMED AS RESPONDENTS.

3. ALL OF THE ISSUES AND ARGUMENTS RAISED BY THE RESPONDENTS IN THEIR REQUEST FOR REVIEW WERE FULLY CONSIDERED BY THE BOARD PRIOR TO MAKING ITS DECISION OF JULY 29, 1966, AND THE BOARD DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION DATED JULY 29, 1966.

12131-66-R: LOCAL UNION 804, OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) (APPLICANT) v. FERGUS CABLES LIMITED (RESPONDENT) v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND
P. J. O'KEEFE.

DECISION OF THE BOARD: (SEPTEMBER 20, 1966)

1. THE UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (HEREINAFTER REFERRED TO AS THE UNITED ELECTRICAL WORKERS) BY LETTER DATED

SEPTEMBER 12TH, 1966 HAS REQUESTED THAT THE BOARD RECONSIDER ITS RULING WITH REGARD TO THE STATUS OF THE UNITED ELECTRICAL WORKERS MADE AT THE HEARING OF THIS MATTER ON THE ABOVE DATE, WHICH RULING IS SET FORTH IN PARAGRAPH 2 OF THE BOARD'S DECISION OF THE SAME DATE.

2. THE ARGUMENT ADVANCED BY THE UNITED ELECTRICAL WORKERS AT THE HEARING ON SEPTEMBER 12TH IN SUPPORT OF ITS SUBMISSION THAT IT HAD AN INTEREST WHICH ENTITLED IT TO PARTICIPATE IN THIS PROCEEDING WAS THAT IT IS A PARTY TO A COLLECTIVE AGREEMENT COVERING EMPLOYEES OF CANADA WIRE & CABLE COMPANY LIMITED (OF WHICH THE RESPONDENT IS A WHOLLY OWNED SUBSIDIARY) AT A PLANT LOCATED IN METROPOLITAN TORONTO. THE UNITED ELECTRICAL WORKERS HAVE NOT PROVIDED ANY ADDITIONAL INFORMATION WHICH WAS NOT BEFORE THE BOARD WHEN IT MADE ITS RULING, NOR HAVE THE UNITED ELECTRICAL WORKERS RAISED ANY OTHER ARGUMENTS BEARING ON THE ISSUE OF ITS STATUS. FURTHER, THE DECISIONS OF THE BOARD CITED IN ITS LETTER OF SEPTEMBER 12TH HAVE NO RELEVANCE TO THAT ISSUE. IN SUPPORT OF ITS RULING, HOWEVER, THE BOARD WOULD REFER TO THE DECISION OF McRUER C.J.H.C. IN THE NORTHERN ELECTRIC COMPANY LIMITED CASE (1963) 2 O.R. 301, TO WHICH THE UNITED ELECTRICAL WORKERS WERE A PARTY.

3. ON THE BASIS OF THE REPRESENTATIONS CONTAINED IN THE UNITED ELECTRICAL WORKERS' LETTER OF SEPTEMBER 12TH, 1966, THE BOARD SEES NO REASON TO REVISE OR REVOKE ITS DECISION OF THE SAME DATE. THE REQUEST OF THE UNITED ELECTRICAL WORKERS, ACCORDINGLY, IS DENIED.

EXCERPT FROM DECISION IN CONSTRUCTION INDUSTRY CASE

12171-66-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA LOCAL 1819 (APPLICANT) v. TRENT GLASS LTD. (RESPONDENT).

3. AFTER DUE CONSIDERATION OF THE REPRESENTATIONS OF THE PARTIES THE BOARD FINDS FURTHER THAT ALL GLAZIERS AND GLAZIERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

FOR PURPOSES OF CLARITY THE BOARD DECLARES:

- 1) THAT THE EMPLOYEES IN THE BARGAINING UNIT ARE ENGAGED IN GLASS, GLAZING AND METAL WORK INSTALLATION;
- 2) THAT EMPLOYEES PRIMARILY ENGAGED IN SHOP WORK ARE NOT INCLUDED IN THE BARGAINING UNIT; AND
- 3) THAT R. JOPLING AND D. REID, CLASSIFIED BY THE RESPONDENT AS HELPERS, ARE INCLUDED IN THE BARGAINING UNIT.

THE BOARD TAKES NOTE OF THE STATEMENT BY THE REPRESENTATIVE OF THE APPLICANT AT THE HEARING THAT AN AGREEMENT EXISTS BETWEEN THE PARENT UNION OF THE APPLICANT LOCAL AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS RESPECTING JURISDICTION OVER METAL WORK INSTALLATION.

STATISTICAL TABLES FOR SEPTEMBER 1966

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	SEPTEMBER 1ST 1966	6 MONTHS OF FISCAL YEAR 1966-67	1965-66
I. CERTIFICATION	69	511	508
II. DECLARATION TERMINATING BARGAINING RIGHTS	-	17	30
III. DECLARATION OF SUCCESSOR STATUS	-	4	5
IV. DECLARATION THAT STRIKE UNLAWFUL	3	12	29
V. DECLARATION THAT LOCK-OUT UNLAWFUL	-	-	1
VI. CONSENT TO PROSECUTE	6	50	33
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	7	60	65
VIII. MISCELLANEOUS	<u>8</u> <u>93</u>	<u>33</u> <u>687</u>	<u>31</u> <u>702</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	SEPTEMBER 1ST 1966	6 MONTHS OF FISCAL YEAR 1966-67	1965-66
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	92	450	631

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR

RELATIONS BOARD BY MAJOR TYPES

		NUMBER DISPOSED OF		
		SEPTEMBER 1ST 6 MONTHS OF FISCAL YEAR		
		1966	1966-67	1965-66
I.	CERTIFICATION	91	506	517
II.	DECLARATION TERMINATING BARGAINING RIGHTS	-	19	30
III.	DECLARATION OF SUCCESSOR STATUS	1	3	9
IV.	DECLARATION THAT STRIKE UNLAWFUL	3	9	27
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	-	1
VI.	CONSENT TO PROSECUTE	8	42	28
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	6	63	65
VIII.	MISCELLANEOUS	<u>3</u>	<u>22</u>	<u>48</u>
TOTAL		<u>112</u>	<u>664</u>	<u>725</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>SEPTEMBER 1ST 6 MTHS FISCAL YR.</u>	<u>SEPTEMBER 1ST 6 MTHS FISCAL YR.</u>	<u>SEPTEMBER 1ST 6 MTHS FISCAL YR.</u>	<u>SEPTEMBER 1ST 6 MTHS FISCAL YR.</u>	<u>SEPTEMBER 1ST 6 MTHS FISCAL YR.</u>	<u>SEPTEMBER 1ST 6 MTHS FISCAL YR.</u>
	<u>1966</u>	<u>1966-67</u>	<u>1965-66</u>	<u>1966</u>	<u>1966-67</u>	<u>1965-66</u>
<u>I. CERTIFICATION</u>						
GRANTED	67	363	377	2584	9571	10193
DISMISSED	18	88	94	1260	8015	3945
WITHDRAWN	<u>6</u>	<u>53</u>	<u>46</u>	<u>62</u>	<u>742</u>	<u>2899</u>
TOTAL	<u>91</u>	<u>504</u>	<u>517</u>	<u>3906</u>	<u>18328</u>	<u>17037</u>
<u>II. TERMINATION</u>						
<u>OF BARGAINING</u>						
<u>RIGHTS</u>						
GRANTED	-	12	13	-	460	1057
DISMISSED	-	7	15	-	187	367
WITHDRAWN	<u>-</u>	<u>-</u>	<u>2</u>	<u>-</u>	<u>-</u>	<u>73</u>
TOTAL	<u>-</u>	<u>19</u>	<u>30</u>	<u>-</u>	<u>647</u>	<u>1497</u>

* THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
		SEPTEMBER 1ST 1966	6 MONTHS OF 1966-67	FISCAL YEAR 1965-6
III.	<u>DECLARATION THAT STRIKE</u> <u>UNLAWFUL</u>			
	GRANTED	-	2	6
	DISMISSED	-	-	3
	WITHDRAWN	<u>3</u>	<u>7</u>	<u>18</u>
	TOTAL	<u>3</u>	<u>9</u>	<u>27</u>
IV.	<u>DECLARATION THAT LOCKOUT</u> <u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	1
	WITHDRAWN	<u>-</u>	<u>-</u>	<u>-</u>
	TOTAL	<u>-</u>	<u>-</u>	<u>1</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	2	6	5
	DISMISSED	2	4	4
	WITHDRAWN	<u>4</u>	<u>32</u>	<u>19</u>
	TOTAL	<u>8</u>	<u>42</u>	<u>28</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED
OF BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>SEPTEMBER 1ST 1966</u>	<u>6 MTHS FISCAL YEAR 1966-67</u>	<u>1965-66</u>
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	-	8	11
POST-HEARING VOTE	3	19	16
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	1	4	3
POST-HEARING VOTE	9	35	19
BALLOTS NOT COUNTED	-	-	2
TOTAL	<u>13</u>	<u>66</u>	<u>51</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED
OF BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>SEPTEMBER 1ST 1966</u>	<u>6 MTHS FISCAL YEAR 1966-67</u>	<u>1965-66</u>
*RESPONDENT UNION SUCCESSFUL	-	4	1
RESPONDENT UNION UNSUCCESSFUL	-	9	12
TOTAL	<u>-</u>	<u>13</u>	<u>13</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING OCTOBER 1966

BARGAINING AGENTS CERTIFIED DURING OCTOBER

NO VOTE CONDUCTED

11448-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) v. VILLAGE CONTRACTORS (RESPONDENT) v. BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (27 EMPLOYEES IN THE UNIT).

11474-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) v. ZACHARY DE VUONO LIMITED (RESPONDENT) v. BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

11871-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. ROMAN RAILINGS CO. LTD. (RESPONDENT).

UNIT: "ALL IRON WORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 476).

12002-66-R: FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL.CIO.CLO. (APPLICANT) v. ROMI FOODS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT PRODUCTION MANAGER, PERSONS ABOVE THE RANK OF PRODUCTION MANAGER, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED IN OFF-SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (35 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12057-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE MUNICIPALITY OF NEEBING (RESPONDENT) v. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 268 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NEEBING TOWNSHIP, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 482).

12089-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1190 (APPLICANT) v. MARTINWAY INVESTMENTS (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (73 EMPLOYEES IN THE UNIT).

12090-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) v. LAURELCREST INVESTMENTS (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (72 EMPLOYEES IN THE UNIT).

12102-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. LAURELCREST INVESTMENTS (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (31 EMPLOYEES IN THE UNIT).

12153-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 183 (APPLICANT) V. WAYNE PUMP CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD. (14 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 489).

12155-66-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. NORRIS TRANSPORT LIMITED (RESPONDENT) V. CANADIAN TRANSPORTATION WORKERS' UNION No. 197, N.C.C.L. (INTERVENER).

- AND -

12156-66-R: CANADIAN TRANSPORTATION WORKERS' UNION No. 197, NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT) V. NORRIS TRANSPORT LIMITED (RESPONDENT) V. GENERAL TRUCK DRIVERS' UNION, LOCAL 879 (INTERVENER).

(THE ABOVE APPLICATIONS ARE CONSOLIDATED)

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (19 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 491).

12165-66-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. T. ZELMER CONSTRUCTION Co. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE PATRICIA PORTION OF THE DISTRICT OF KENORA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN OF OFFICE STAFF (16 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 495).

12206-66-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 756 - A.F.L. C.I.O. C.L.C. (APPLICANT) v. DOMINION SPORTSERVICE LIMITED (RESPONDENT).

UNIT #1: "ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, BARBOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT AT GARDEN CITY RACEWAY IN THE TOWNSHIP OF NIAGARA, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."
(3 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, BARBOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT AT GARDEN CITY RACEWAY IN THE TOWNSHIP OF NIAGARA REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT ASSISTANT MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT MANAGER." (9 EMPLOYEES IN THE UNIT).

12223-66-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE TOWNSHIP OF NEPEAN (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS SEWER, WATER AND ROADS DEPARTMENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF."
(31 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12228-66-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. BRINK'S EXPRESS COMPANY OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL MESSENGERS, CHAUFFEURS, TELLERS AND GUARDS IN THE EMPLOY OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT BRANCH MANAGER, PERSONS ABOVE THE RANK OF BRANCH MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 15 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES AND THE HISTORY OF BARGAINING BETWEEN THE PARTIES AT OTHER LOCATIONS).

12230-66-R: LOCAL UNION 278, WINDSOR, ONTARIO, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL - CIO - CLC (APPLICANT) v. BREWERS' WAREHOUSING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL WAREHOUSE CLERKS, EMPLOYED BY THE RESPONDENT AT ITS WAREHOUSE AT 2390 WALKER ROAD, WINDSOR, ONTARIO, SAVE AND EXCEPT OFFICE STAFF AND PERSONS OF A SUPERVISORY CAPACITY SUCH AS FOREMAN OR MANAGER, THOSE ABOVE THE RANK OF FOREMAN OR MANAGER, HAVING THE AUTHORITY TO EMPLOY OR DISCHARGE OR DISCIPLINE EMPLOYEES."
(3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE CIRCUMSTANCES OF THIS CASE AND THE HISTORY OF COLLECTIVE BARGAINING BETWEEN THE PARTIES).

12235-66-R: THE METHODS, WAGE RATE AND SENIOR COST TECHNICIANS' ASSOCIATION OF ONTARIO, LOCAL 166, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L. - C.I.O., C.L.C. (APPLICANT) v. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT).

UNIT: "ALL METHODS PLANNERS, METHODS TIME STANDARDS AND METHODS PLANNERS RATESETTERS IN THE EMPLOY OF THE RESPONDENT AT ITS SCARBOROUGH PLANT AT EGLINTON AVENUE EAST, SAVE AND EXCEPT METHODS SUPERVISORS AND PERSONS ABOVE THE RANK OF METHODS SUPERVISOR." (15 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12241-66-R: TEXTILE WORKERS UNION OF AMERICA, CLC., AFL-CIO (APPLICANT) v. R. W. MATTHEWMAN, DIVISION MODEL DYE WORKS (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (57 EMPLOYEES IN THE UNIT).

12244-66-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. STRAN-STEEL DIVISION OF TORONTO IRON WORKS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RICHMOND HILL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (60 EMPLOYEES IN THE UNIT).

12245-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) v. THE TOPE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

12246-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE TOWN OF BURLINGTON. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS RECREATION AND PARKS DEPARTMENT, SAVE AND EXCEPT FOREMEN AND FACILITY MANAGERS, PERSONS ABOVE THE RANK OF FOREMAN AND FACILITY MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (28 EMPLOYEES IN THE UNIT).

12247-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. JESSOP STEEL OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WALLACEBURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (15 EMPLOYEES IN THE UNIT).

12249-66-R: THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L. - C.I.O., C.L.C. (APPLICANT) V. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT).

UNIT: "ALL DRAFTSMEN AND APPRENTICE DRAFTSMEN IN THE EMPLOY OF THE RESPONDENT AT ITS SCARBOROUGH PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (22 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 506).

12254-66-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. MOYER SAND (1965) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RIDGEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (23 EMPLOYEES IN THE UNIT).

12255-66-R: SUDBURY GENERAL WORKERS UNION, LOCAL # 101, CANADIAN LABOUR CONGRESS (APPLICANT) V. MEREDITH-CONNELLY MOTORS COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, MOTOR VEHICLE SALESMEN, SERVICE SALESMEN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (63 EMPLOYEES IN THE UNIT).

12256-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124, OTTAWA-HULL (APPLICANT) V. DICRON LATHING PLASTERING & DRYWALL (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

12260-66-R: FUR & LEATHER WORKERS' UNION, LOCAL 82, AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. ALPHA SHOE MANUFACTURING CO. LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (99 EMPLOYEES IN THE UNIT).

12264-66-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. GREAT LAKES PIPE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF CHATHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

12266-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. INDUSTRIAL MINE INSTALLATIONS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS OR CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS FROM THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

12267-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. C. A. PITTS GENERAL CONTRACTOR LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF POITRAS, CLARKSON, JOCKO AND EDDY AND WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

(IN THE SPECIAL CIRCUMSTANCES OF THIS CASE).

12269-66-R: LOCAL 1590, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL, CIO, CLC) (APPLICANT) V. TEMPLET-CANADA, DIVISION OF MURRAY-JENSEN MFG. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

12273-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. THE CARTER CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

12274-66-R: THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. THE CARTER CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHA, BRIGHTON AND MURRAY IN THE COUNTY OF NORTH UMBERLAND ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

12275-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. NICKEL CITY BUILDERS (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

12280-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 124, OTTAWA - HULL (APPLICANT) V. MILSOM FLOORS LIMITED (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

12283-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE MUNICIPAL CORPORATION OF THE TOWN OF HAWKESBURY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (23 EMPLOYEES IN THE UNIT).

THE BOARD DECLARED THAT FULL-TIME FIRE FIGHTERS WITHIN THE MEANING OF THE FIRE DEPARTMENTS ACT ARE EXCLUDED FROM THE BARGAINING UNIT PURSUANT TO THE PROVISIONS OF SECTION 2(E) OF THE ACT.

12284-66-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE MUNICIPAL CORPORATION OF THE TOWN OF HAWKESBURY (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT CLERK-TREASURER AND PERSONS ABOVE THE RANK OF CLERK-TREASURER." (8 EMPLOYEES IN THE UNIT).

12285-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ELLIS-DON LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF GREY (EXCEPTING THEREFROM THE TOWNSHIPS OF NORMANBY, EGREMONT AND PROTON), ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

12287-66-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) V. ORR AUTOMOBILES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER AND WATERLOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALESMEN, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (56 EMPLOYEES IN THE UNIT).

12293-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION NO. 721 (APPLICANT) V. GILBERT STEEL LTD., BRITANNIA ROAD EAST, MALTON, ONTARIO (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF MUSKOKA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 507).

12295-66-R: WOOD WIRE & METAL LATHERS' INTERNATIONAL UNION, LOCAL 360 (APPLICANT) V. LONDON ACOUSTICS LIMITED (RESPONDENT) V. WESTERN ONTARIO CARPENTERS, MILLWRIGHTS AND MILLMEN DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND ITS AFFILIATED LOCAL UNIONS (INTERVENER).

UNIT: "ALL LATHERS AND LATHERS' APPRENTICES IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (2 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 508).

12297-66-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. TONY'S INDUSTRIAL CATERING LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL DRIVER SALESMEN OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (57 EMPLOYEES IN THE UNIT).

12298-66-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC (APPLICANT) V. EDO (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, ENGINEERS, LABORATORY TECHNICIANS, DRAFTSMAN, ENGINEERING TECHNICIANS AND QUALITY CONTROL INSPECTORS AND TECHNICIANS." (44 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12299-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL-CIO-CLC: (APPLICANT) V. THE BORDEN COMPANY LIMITED (RESPONDENT).

UNIT #1: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT TILLSONBURG, SAVE AND EXCEPT OFFICE MANAGER, PERSONS ABOVE THE RANK OF OFFICE MANAGER, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT INGERSOLL, SAVE AND EXCEPT OFFICE MANAGER, PERSONS ABOVE THE RANK OF OFFICE MANAGER, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

12300-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1758 (APPLICANT) v. WISEMAN AND THOMPSON, GENERAL CONTRACTOR (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

THE APPLICANT PROPOSES AN AREA WHICH, IN PART, OVERLAPS AN ESTABLISHED BOARD AREA, NAMELY, THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY. THE JOB SITES AFFECTED BY THE APPLICATION ARE IN THE TOWNSHIP OF MATILDA WHICH IS LOCATED IN THE SAID UNITED COUNTIES.

12301-66-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE UNITED COUNTIES OF NORTHUMBERLAND AND DURHAM (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS JAIL IN THE TOWN OF COBOURG, SAVE AND EXCEPT CHIEF TURNKEY AND CHIEF MATRON, PERSONS ABOVE THE RANK OF CHIEF TURNKEY AND CHIEF MATRON, AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

12304-66-R: AMALGAMATED CLOTHING WORKERS OF AMERICA CLC AFL-CIO (APPLICANT) v. MURRAY UNIFORM LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).

12311-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. I.T.T. CANNON ELECTRIC CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (117 EMPLOYEES IN THE UNIT).

12312-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) v. FRAN CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

12313-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1190 (APPLICANT) v. FRAN CONTRACTORS (FORMS) LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

12314-66-R: OPERATIVE PLASTERERS & CEMENT MASON INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 172 (APPLICANT) V. FRAN CONTRACTORS (FORMS) LIMITED (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

12315-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. FRAN CONTRACTORS LTD. (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

12320-66-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. CANADIAN NATIONAL INSTITUTE FOR THE BLIND (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT METROPOLITAN TORONTO, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

12322-66-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED PLANT GUARDS, LOCAL 1958 (APPLICANT) V. DUPLATE CANADA LIMITED (RESPONDENT).

UNIT: "ALL SECURITY GUARDS IN THE EMPLOY OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT SUPERVISOR AND PERSONS ABOVE THE RANK OF SUPERVISOR." (8 EMPLOYEES IN THE UNIT).

12323-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)
V. V. K. MASON CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS, TOWER HOISTS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(3 EMPLOYEES IN THE UNIT).

12324-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. HALL LAMP COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN CHINGUACOUSY TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(16 EMPLOYEES IN THE UNIT).

12328-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION, NO. 124, OTTAWA-HULL (APPLICANT) V. MILSON FLOORS LIMITED (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF ELIZABETHTOWN IN THE COUNTY OF LEEDS AND AUGUSTA IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

12331-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL # 1450 (APPLICANT) V. ARNOLD STEELE, GENERAL CONTRACTOR (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(5 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 510).

12332-66-R: UNITED GARMENT WORKERS OF AMERICA LOCAL UNION #253 (APPLICANT) V. RELIABLE LEATHER SPORTSWEAR (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(26 EMPLOYEES IN THE UNIT).

12358-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)
V. GEORGE WIMPEY CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON AND FRONTENAC, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

12121-66-R: THE EMPLOYEES' ASSOCIATION OF PEPSI-COLA CANADA LTD. (OTTAWA BRANCH) (APPLICANT) v. PEPSI-COLA CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF OTTAWA, SAVE AND EXCEPT SALES SUPERVISORS, ROUTE MANAGERS, FOREMEN, PERSONS ABOVE THE RANKS OF SALES SUPERVISOR, ROUTE MANAGER AND FOREMAN, AND OFFICE STAFF."
(82 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		64
NUMBER OF PERSONS WHO CAST BALLOTS		64
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	51	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	13	

12205-66-R: CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (APPLICANT) v. CONTINENTAL CAN COMPANY OF CANADA LIMITED PAPER PRODUCTS DIVISION (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS POWER PLANTS AT ITS #535 TORONTO MILLS AT COMMISSIONER STREET AND POLSON STREET IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF POWER ENGINEERS AND PERSONS ABOVE THE RANK OF CHIEF POWER ENGINEER."
(20 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		20
NUMBER OF PERSONS WHO CAST BALLOTS		20
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	16	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	4	

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

11779-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. GLOBELITE BATTERIES LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(39 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		52
NUMBER OF PERSONS WHO CAST BALLOTS		50
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	36	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	14	

11838-66-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CASCO DISPOSALS LIMITED
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF."
(35 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST AS PER AGREEMENT OF PARTIES		9
NUMBER OF PERSONS WHO CAST BALLOTS	9	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	9	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

12104-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. EATON SPRINGS CANADA
LIMITED (RESPONDENT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT FOREMEN,
PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (19 EMPLOYEES IN
THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		42
NUMBER OF PERSONS WHO CAST BALLOTS	42	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	12	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	30	

12122-66-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SUDBURY
GENERAL HOSPITAL OF THE IMMACULATE HEART OF MARY (RESPONDENT) V. GROUP OF
EMPLOYEES (OBJECTORS).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT
PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE
PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS,
TECHNICAL PERSONNEL, SUPERVISORS AND FOREMAN, PERSONS ABOVE THE RANK OF SUPERVISOR
AND FOREMAN, ASSISTANT CHIEF ENGINEER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR
NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION
PERIOD." (290 EMPLOYEES IN THE UNIT).

THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIO-
THERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS,
ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIO-
LOGICAL TECHNICIANS.

THE BOARD FURTHER DECLARED THAT THE BARGAINING UNIT INCLUDED CERTIFIED NURSING ASSISTANTS.

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		257
NUMBER OF PERSONS WHO CAST BALLOTS	252	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	155	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	97	

12204-66-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. QUINTE PLUMBING AND HEATING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GLEN MILLER, SAVE AND EXCEPT FOREMEN PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

VOTING CONSTITUENCY #1:

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF LOCAL UNION #320 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA	1	

VOTING CONSTITUENCY #2:

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		1
NUMBER OF PERSONS WHO CAST BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 269	0	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING OCTOBER

NO VOTE CONDUCTED

11844-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. HEATH AND SHERWOOD DRILLING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (56 EMPLOYEES)

12067-66-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. YVAN SIMARD (RESPONDENT). (26 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 483).

12164-66-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. A. K. PENNER & SONS LTD. (RESPONDENT). (33 EMPLOYEES).

12193-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. WOODBRIDGE MOULDED PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(36 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 498).

12214-66-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. VICTORIA HOSPITAL BOARD OF TRUSTEES OF THE CITY OF LONDON (RESPONDENT) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION, LOCAL 220, BSEIU (INTERVENER). (16 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 500).

12219-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. GEORGE & ASMUSSEN LIMITED (RESPONDENT). (3 EMPLOYEES).

12233-66-R: THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L. - C.I.O., C.L.C. (APPLICANT) V. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT). (2 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 505).

12265-66-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. EARL LINDSAY & SONS LTD. DRAIN TILE MANUFACTURERS (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (17 EMPLOYEES).

12279-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CLAIRSON CONSTRUCTION COMPANY LIMITED (RESPONDENT) V. CLAIRSON EMPLOYEES' ASSOCIATION (INTERVENER). (43 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

11918-66-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION AFL.CIO.CLC. (APPLICANT) V. EX-CELL-O CORPORATION OF CANADA LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PRIVATE SECRETARY TO THE GENERAL MANAGER, ALL EMPLOYEES OF THE PERSONNEL DEPARTMENT, PLANNING NURSE, PURCHASING AGENT, OUTSIDE SALESMEN, MANAGEMENT TRAINEES AND PROFESSIONAL ENGINEERS PRACTISING THEIR PROFESSION FOR THE COMPANY." (66 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		67
NUMBER OF PERSONS WHO CAST BALLOTS		57
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	9	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	46	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

11821-66-R: TEXTILE WORKERS UNION OF AMERICA, CLC-AFL-CIO (APPLICANT) V. HARDING BRANTFORD LIMITED (RESPONDENT) V. THE CANADIAN TEXTILE COUNCIL, LOCAL 501 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS ELGIN STREET PLANT AT BRANTFORD SAVE AND EXCEPT FOREMEN AND DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF FOREMAN AND DEPARTMENT HEAD, FIXERS, MOULD MAKERS, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		38
NUMBER OF PERSONS WHO CAST BALLOTS		37
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	14	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	23	

12103-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC. (APPLICANT) V. CHAMBERS FOODS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		8
NUMBER OF PERSONS WHO CAST BALLOTS		8
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	5	

12145-66-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. CHROMELITE LAMP CORPORATION LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NEUSTADT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (38 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		30
NUMBER OF PERSONS WHO CAST BALLOTS		30
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	10	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	18	

12185-66-R: CANADIAN TEXTILE WORKERS' UNION, LOCAL 195, NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT) V. THE DOBBIE INDUSTRIES LIMITED (WORSTED YARN DIVISION) (RESPONDENT) V. TEXTILE WORKERS' UNION OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANTS IN THE COUNTIES OF WATERLOO AND WELLINGTON, SAVE AND EXCEPT SUPERVISORS, FOREMEN ASSISTANT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN, ASSISTANT FOREMAN OR FORELADY, LABORATORY PERSONNEL AND OFFICE STAFF." (381 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		364
NUMBER OF PERSONS WHO CAST BALLOTS		358
NUMBER OF SPOILED BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	143	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	212	

12225-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 607 (APPLICANT) V. PILLAR CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF PINARD IN THE DISTRICT OF COCHRANE AND IN THOSE TOWNSHIPS IMMEDIATELY ADJACENT TO THE SAID TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT).

THE BOARD FINDS THAT THE SCREENING MACHINE OPERATOR AND THE MIXER OPERATOR ARE EMPLOYEES INCLUDED IN THE BARGAINING UNIT BUT THAT THE FRONT END LOADER OPERATOR, THE BULLDOZER OPERATOR AND THE TRUCK DRIVER ARE NOT EMPLOYEES INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		20
NUMBER OF PERSONS WHO CAST BALLOTS		20
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	15	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING OCTOBER

12262-66-R: WOODSTOCK TYPOGRAPHICAL UNION LOCAL 317 (ITU) (APPLICANT) V. WOODSTOCK DAILY SENTINEL - REVIEW (RESPONDENT). (4 EMPLOYEES).

12290-66-R: NATIONAL-STANDARD EMPLOYEE'S ASS'N. (APPLICANT) V. NATIONAL-STANDARD Co. OF CANADA, LIMITED (RESPONDENT). (52 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING
OCTOBER

11733-66-R: DAN K. HOECKE (APPLICANT) V. GLAZIERS AND GLASSWORKERS LOCAL UNION 1819 OF THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA (RESPONDENT) V. CANADIAN STRUCTURAL GLASS LIMITED (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE INTERVENER ENGAGED IN THE GLASS, GLAZING AND METAL WORK INSTALLATION IN METROPOLITAN TORONTO AND VICINITY, ON ALL CONSTRUCTION JOBS, SAVE AND EXCEPT OFFICE STAFF AND SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (20 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		14
NUMBER OF PERSONS WHO CAST BALLOTS		13
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	4	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	8	

12146-66-R: JAMES M. D. WATT (APPLICANT) V. UNITED AUTO WORKERS LOCAL # 641 (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF INSTRUMENTS (1951) LIMITED AT ITS OTTAWA BRANCH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (65 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

NUMBER OF PERSONS WHO CAST BALLOTS

NUMBER OF SPOILED BALLOTS

NUMBER OF BALLOTS MARKED IN FAVOUR
OF RESPONDENT

NUMBER OF BALLOTS MARKED AGAINST
RESPONDENT

1

9

55

65

65

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING OCTOBER

12335-66-R: INTERNATIONAL CHEMICAL WORKERS UNION A.F.L. C.I.O. C.L.C.
(APPLICANT) V. DOMTAR CHEMICALS LIMITED, SIFTO SALT DIVISION (RESPONDENT) V.
FEDERAL UNION NO. 23736 CANADIAN LABOUR CONGRESS (PREDECESSOR TRADE UNION).
(GRANTED).

12375-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION NO. 1019 (APPLICANT)
V. THE SARNIA BOARD OF EDUCATION (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING OCTOBER

12263-66-U: THE CORPORATION OF THE CITY OF BRANTFORD (APPLICANT) V. GEORGE
AITCHISON, ET AL (RESPONDENTS). (WITHDRAWN).

12277-66-U: CAMSTON LIMITED (APPLICANT) V. LOCAL 18, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA (RESPONDENT). (WITHDRAWN).

12316-66-U: FRANKLIN MANUFACTURING COMPANY (CANADA) LIMITED (APPLICANT) V.
WILLIAM BARNHARDT, ET AL (RESPONDENTS). (WITHDRAWN).

12364-66-U: MASSEY-FERGUSON BRANTFORD LIMITED (APPLICANT) V. A. ALLARD, ET AL
(RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING OCTOBER

11950-66-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) V. CHARLES DUNCAN,
AND TORONTO AND DISTRICT COUNCIL OF CARPENTERS AND MILLMEN, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA (RESPONDENTS). (WITHDRAWN).

12278-66-U: CAMSTON LIMITED (APPLICANT) V. LOCAL 18, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA AND THOMAS FENWICK (RESPONDENTS). (WITHDRAWN).

12302-66-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BELLEVILLE
PUBLIC SCHOOL BOARD (RESPONDENT). (GRANTED).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

OCTOBER

11557-65-U: LEONARD R. BOIVIN, MEMBER LOCAL 800, SUDBURY (COMPLAINANT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 67, AND NORMAN BEANLAND BUSINESS MANAGER OF LOCAL 67 (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 513).

11558-65-U: STEPHEN LEACHIE LOCAL 46, TORONTO, ONTARIO (COMPLAINANT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 67, AND NORMAN BEANLAND BUSINESS MANAGER OF LOCAL 67 (RESPONDENTS).

12211-66-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC. (COMPLAINANT) V. MCNAIR PRODUCTS COMPANY LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 518).

12251-66-U: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 (COMPLAINANT) V. TORONTO-TRINITY DEVELOPMENT CORPORATION LIMITED (RESPONDENT).

12252-66-U: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 421 (COMPLAINANT) V. THE KVP COMPANY LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 524).

12305-66-U: LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (A.F.L.-C.I.O.-C.L.C.) (COMPLAINANT) V. MUIRHEAD INSTRUMENTS LIMITED (RESPONDENT).

12306-66-U: LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (A.F.L.-C.I.O.-C.L.C.) (COMPLAINANT) V. MUIRHEAD INSTRUMENTS LIMITED (RESPONDENT).

12327-66-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. TONY'S INDUSTRIAL CATERING LTD. (RESPONDENT).

APPLICATION FOR DETERMINATION UNDER SECTION 34(3) DISPOSED OF DURING OCTOBER

11874-66-M: INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS, AFL-CIO-CLC AND ITS LOCALS 534, 544, 567 AND 599 (APPLICANTS) V. CANADIAN GENERAL ELECTRIC COMPANY, LIMITED (RESPONDENT).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

12294-66-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (U.A.W.) ITS STUDEBAKER OF CANADA, LIMITED LOCAL NUMBER 525 AND STUDEBAKER OF CANADA, LIMITED (APPLICANTS). (GRANTED).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING OCTOBER

12212-66-M: LOCAL 9-599, OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. BP MARKETING CANADA LIMITED; BP MARKETING CANADA LIMITED, SACCO FUEL OIL DIVISION; FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS & ALLIED EMPLOYEES OF ONTARIO, LOCAL UNION 352, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 527).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING OCTOBER

11483-65-M: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS LOCAL UNION 419 (APPLICANT) V. HAZEL BISHOP OF CANADA LIMITED (RESPONDENT).

11552-65-M: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. MANNESMANN TUBE COMPANY, LTD. (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 528).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79A DISPOSED OF DURING OCTOBER

12010-66-M: FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL - CIO - CLC (TRADE UNION) V. SUNNYBROOK FOOD MARKET (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 531).

12011-66-M: LOCAL UNION 633 AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL - CIO - CLC (TRADE UNION) V. SUNNYBROOK FOOD MARKET (EMPLOYER).

12012-66-M: FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL - CIO - CLC (TRADE UNION) V. SUNNYBROOK FOOD MARKET (EMPLOYER).

12149-66-M: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1758 (TRADE UNION) V. DICK VANDENBELT, GENERAL CONTRACTOR (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 534).

12194-66-M: THE OTTAWA CITIZEN, A DIVISION OF THE SOUTHAM COMPANY LIMITED (EMPLOYER) v. THE OTTAWA PRINTING CRAFTS UNION, AN AFFILIATE OF THE NATIONAL COUNCIL OF CANADIAN LABOUR (TRADE UNION).

(SEE INDEXED ENDORSEMENT PAGE 535).

12195-66-M: DRYDEN 5¢ TO \$1.00 STORE LIMITED (EMPLOYER) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION (TRADE UNION).

(SEE INDEXED ENDORSEMENT PAGE 538).

12196-66-M: WALTER B. JOB (EMPLOYER) v. GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (TRADE UNION).

12200-66-M: PIGOTT CONSTRUCTION COMPANY LIMITED (EMPLOYER) v. CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (TRADE UNION).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

12165-66-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. T. ZELMER CONSTRUCTION Co. LTD. (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 541).

12214-66-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. VICTORIA HOSPITAL BOARD OF TRUSTEES OF THE CITY OF LONDON (RESPONDENT) v. LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION, LOCAL 220, BSEIU (INTERVENER). (REQUEST DENIED).

INDEXED ENDORSEMENTS - CERTIFICATION

11448-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) v. VILLAGE CONTRACTORS (RESPONDENT) v. BRICKLAYERS' MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q. C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: (OCTOBER 6TH, 1966).

1. THE BOARD HAS CAREFULLY CONSIDERED THE WRITTEN REPRESENTATIONS OF THE PARTIES FILED WITH THE BOARD PURSUANT TO A DIRECTION SET OUT IN ITS DECISION DATED JULY 28, 1966. IN SO FAR AS THE ARGUMENTS RELATE TO SECTION 6(2) OF THE LABOUR RELATIONS ACT, WE AGREE WITH THE SUBMISSION OF THE APPLICANT AS SET OUT IN ITS LETTER DATED SEPTEMBER 29, 1966. IN ANY EVENT, THERE APPEARS TO BE A MISUNDERSTANDING ON THE PART OF ALL PARTIES RESPECTING THE APPLICATION OF SECTION 6(2) OF THE CASE. IN DEFINING THE BARGAINING UNIT IN ITS DECISION OF JULY 28, THE

BOARD WAS NOT ACTING UNDER THAT SUBSECTION. THE BOARD HAS NEVER HELD THAT CONSTRUCTION LABOURERS CONSTITUTE A CRAFT WITHIN THE MEANING OF SECTION 6(2) AND IN FINDING THAT CONSTRUCTION LABOURERS CONSTITUTE AN APPROPRIATE BARGAINING UNIT, THE BOARD HAS ALWAYS ACTED UNDER SECTION 6(1), NOT SECTION 6(2). THE BOARD THEREFORE DOES NOT PROPOSE TO HEAR ANY EVIDENCE RELATING TO THE APPLICABILITY OF SECTION 6(2) OF THE ACT TO THIS CASE.

2. AS TO THE JURISDICTION OF THE BOARD TO HEAR EVIDENCE ON THE QUESTION AS TO WHETHER THE APPLICANT IS "AN APPROPRIATE LABOUR UNION TO BE CERTIFIED IN THE CIRCUMSTANCES OF THE SUBURBAN BUILDING INDUSTRY", WE HAVE DECIDED THAT IN ALL THE CIRCUMSTANCES OF THIS CASE THIS IS NOT A MATTER THAT SHOULD BE DETERMINED ON THE BASIS OF ASSUMED STATEMENTS OF FACTS. IN OUR VIEW THE RESPONDENT SHOULD HAVE AN OPPORTUNITY TO LEAD ITS EVIDENCE AND DEVELOP ITS ARGUMENT WITH RESPECT THERETO AND AT THAT STAGE THE BOARD WILL BE IN A BETTER POSITION TO DECIDE THE JURISDICTIONAL QUESTION. OF COURSE IN FINAL ARGUMENT IT WILL BE OPEN TO THE PARTIES TO MAKE SUCH ADDITIONAL ARGUMENTS ON THE QUESTION OF JURISDICTION AS THEY SEE FIT. EXCEPT, THEREFORE, IN THIS LAST RESPECT, THE BOARD'S DECISION OF AUGUST 29, 1966 IS HEREBY CONFIRMED.

3. AFTER CONSIDERING THE MATTERS REFERRED TO BY THE RESPONDENT IN ITS "FURTHER" REPLY, IT APPEARS THAT SOME EVIDENCE WITH RESPECT TO THESE MATTERS HAS ALREADY BEEN PUT BEFORE THE BOARD. IN ADDITION, IT SEEMS POSSIBLE THAT THE PARTIES MAY BE ABLE TO AGREE ON OTHER MATTERS. IN AN ATTEMPT, THEREFORE, TO SHORTEN THE FUTURE COURSE OF THESE PROCEEDINGS THE BOARD STRONGLY SUGGESTS TO THE PARTIES THAT THEY MEET SOME TIME PRIOR TO THE DATE SET FOR CONTINUATION OF HEARING FOR THE PURPOSE OF TRYING TO REACH AN AGREED STATEMENT OF FACTS ON SOME OR ALL OF THE MATTERS RAISED BY THE RESPONDENT IN ITS "FURTHER" REPLY.

11474-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) v. ZACHARY DE VUONO LIMITED (RESPONDENT) v. BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE, J. DILLON AND M. TOPPAN FOR THE APPLICANT; W. FRAM AND Z. DE VUONO FOR THE RESPONDENT; AND LLOYD D. CADSBY FOR THE OBJECTORS.

DECISION OF THE BOARD: (OCTOBER 19, 1966).

THIS IS AN APPLICATION FOR CERTIFICATION. THE BOARD HAS ALREADY ISSUED A NUMBER OF DECISIONS IN THIS CASE (DATED MARCH 17, APRIL 4, MAY 6, MAY 12, JUNE 10, JUNE 13, AND JUNE 30, 1966), IN WHICH THE HISTORY OF THE PROCEEDINGS IS SET OUT AND THE ISSUES DEFINED. IT IS THEREFORE UNNECESSARY TO REVIEW THESE MATTERS AT THIS STAGE, OTHER THAN TO OBSERVE THAT THE INTERVENER SHOWN IN THE STYLE OF CAUSE (HEREINAFTER REFERRED TO AS "LOCAL #1") IS NO LONGER A PARTY, HAVING WITHDRAWN ITS INTERVENTION BY LETTER DATED MARCH 28, 1966. IT SHOULD PERHAPS BE NOTED, ALSO, THAT COUNSEL FOR THE OBJECTORS WITHDREW (AS COUNSEL) AT THE SAME TIME BUT SUBSEQUENTLY AGAIN WAS RETAINED AND APPEARED AT THE HEARING HELD ON JUNE 27, 1966 AND THEREAFTER.

DURING THE COURSE OF THE HEARINGS IN THIS MATTER, WHICH COMMENCED ON MARCH 16, 1966 AND CONTINUED, AT INTERVALS, UNTIL JULY 22, 1966, IT WAS ANNOUNCED BY THE BOARD (A) THAT THE RESPONDENT HAD FILED A LIST OF EMPLOYEES IN THE PROPOSED BARGAINING UNIT CONTAINING TWELVE NAMES, (B) THAT THE APPLICANT HAD FILED EVIDENCE OF MEMBERSHIP FOR EIGHT PERSONS SHOWN ON THE EMPLOYER'S LIST AND (C) THAT TWELVE PERSONS (HEREINAFTER REFERRED TO AS "OBJECTORS"), WHOSE NAMES APPEAR ON THE SAID LIST, FILED INDIVIDUAL LETTERS (HEREINAFTER REFERRED TO AS "PETITIONS") OBJECTING TO THE APPLICATION. IT IS THUS APPARENT THAT ALL OF THE EMPLOYEES FOR WHOM THE APPLICANT FILED EVIDENCE OF MEMBERSHIP ARE OBJECTORS.

THE MATTERS PRESENTLY BEFORE THE BOARD FOR DECISION RELATE TO (A) THE WEIGHT TO BE GIVEN THE PETITIONS, (B) A MOTION BY THE APPLICANT UNDER SECTION 7(5) OF THE LABOUR RELATIONS ACT, (C) AN ALLEGATION OF THE RESPONDENT RESPECTING THE STATUS OF THE APPLICANT, AND (D) AN ALLEGATION BY THE RESPONDENT THAT THE APPLICANT MADE A FRAUDULENT STATEMENT IN ITS APPLICATION. FOR THE RECORD IT IS POINTED OUT THAT THE PARTIES AGREED THAT THE BOARD SHOULD PROCEED TO DETERMINE THESE MATTERS EVEN THOUGH, DEPENDING ON THE BOARD'S DECISION, NOT ALL ISSUES IN THE CASE ARE NECESSARILY COMPLETE AND FURTHER HEARINGS, THEREFORE, POSSIBLE. ON THE ISSUES BEFORE US FOR DECISION THE BOARD HAS HEARD EXTENSIVE EVIDENCE AND ARGUMENT.

DEALING FIRSTLY WITH (C), IT WAS AGREED BY ALL COUNSEL THAT THE EVIDENCE GIVEN BY ONE, LINESS, IN ANOTHER CASE SHOULD APPLY IN THIS CASE. IN OUR VIEW THERE IS NOTHING IN THE EVIDENCE BEFORE US WHICH DISCLOSES ANY DEFECT IN THE STATUS OF THE APPLICANT.

WITH RESPECT TO (D), COUNSEL FOR THE RESPONDENT FAILED TO ARGUE THIS POINT IN MAKING HIS SUBMISSIONS IN THIS CASE. HOWEVER, SO THAT THERE MAY BE NO MIS-UNDERSTANDING, WE WISH TO MAKE IT CLEAR THAT WE HAVE BEEN UNABLE TO FIND ANY EVIDENCE OF A FRAUDULENT STATEMENT HAVING BEEN MADE IN THE APPLICATION FORM. IF THE PERSON SIGNING THE APPLICATION DID IN FACT DESCRIBE HIS OFFICE INCORRECTLY, IT WAS AT MOST AN HONEST MISTAKE. FURTHER, THERE IS NO EVIDENCE THAT THE PERSON RESPONSIBLE FOR COMPLETING THE APPLICATION FORM HAD ANY KNOWLEDGE THAT LOCAL #1 HAD MEMBERSHIP AMONG OR CLAIMED TO REPRESENT THE EMPLOYEES OF THE RESPONDENT.

HAVING REGARD, THEN, TO THE ABOVE CONSIDERATIONS AND TO ALL THE EVIDENCE BEFORE US, THE BOARD FINDS:

1. THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT;
2. THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

THERE IS NO DISPUTE BETWEEN THE PARTIES ON THE DESCRIPTION OF THE BARGAINING UNIT. THE BOARD THEREFORE FINDS FURTHER THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD,

RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

WE NOW TURN TO A CONSIDERATION OF THE ISSUE SET OUT IN (A) ABOVE, THAT IS, THE WEIGHT TO BE GIVEN THE PETITIONS. IN ORDER TO DEAL WITH THIS MATTER IT IS NECESSARY TO REVIEW AT THE OUTSET ALL THE CIRCUMSTANCES SURROUNDING THE MAKING OF THE PRESENT APPLICATION BEFORE CONSIDERING THE FACTS CONCERNING THE ORIGINATION AND CIRCULATION OF THE PETITIONS. ON FEBRUARY 18, 1966 THE PRESENT APPLICANT, LOCAL 506, FILED AN APPLICATION FOR CERTIFICATION AS BARGAINING AGENT OF THE CONSTRUCTION LABOURERS OF THE PRESENT RESPONDENT, ZACHARY DE VUONO LIMITED, IN THE METROPOLITAN TORONTO AREA. NOTICE OF THIS APPLICATION WAS SENT TO ZACHARY DE VUONO LIMITED BY REGISTERED SPECIAL DELIVERY POST ON FEBRUARY 21. THE APPLICATION WAS DISMISSED BY THE BOARD ON MARCH 1 BECAUSE OF THE FAILURE OF LOCAL 506 TO FILE FORM 60, AND NOTICE OF THIS DECISION WAS SENT TO ZACHARY DE VUONO LIMITED ON THE SAME DAY. ON MARCH 2ND, LOCAL 506 FILED THE PRESENT APPLICATION AND REQUESTED THAT THE MEMBERSHIP EVIDENCE FILED IN THE EARLIER APPLICATION BE TRANSFERRED TO THIS CASE. ALL OF THE APPLICATION CARDS AND RECEIPTS SO TRANSFERRED BEAR DATES NOT LATER THAN FEBRUARY 17TH.

COUNSEL FOR ALL PARTIES AGREED THAT LOCAL 40 OF THE BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA STARTED TO ORGANIZE BRICKLAYERS' ASSISTANTS (LABOURERS) IN THE RESIDENTIAL HOUSING INDUSTRY IN METROPOLITAN TORONTO IN APRIL, 1964. SUBSEQUENTLY CERTAIN DISSIDENT OFFICERS AND MEMBERS OF LOCAL 40 BROKE AWAY FROM THAT UNION AND FORMED A NEW UNION, NAMELY, BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1, THE FORMER INTERVENER IN THIS CASE. THE NEW UNION COMMENCED ITS OWN ORGANIZATIONAL DRIVE AMONG THE BRICKLAYERS' ASSISTANTS. THE EVIDENCE ESTABLISHES THAT BETWEEN THE TWO UNIONS, THAT IS, LOCAL 40 AND LOCAL #1, SOME FIVE ORGANIZATIONAL MEETINGS WERE HELD UP TO AND INCLUDING FEBRUARY 22, 1966. IN MARCH OF 1965 WHEN LOCAL #1 SIGNED A COLLECTIVE AGREEMENT WITH THE MASONRY CONTRACTORS' ASSOCIATION (HEREINAFTER REFERRED TO AS THE "M.C.A."), OF WHICH THE PRESENT RESPONDENT WAS AND IS A MEMBER, COVERING BRICKLAYERS, LOCAL #1 SOUGHT TO INCLUDE BRICKLAYERS' ASSISTANTS BUT WERE TOLD THAT THEY DID NOT HAVE SUFFICIENT MEMBERSHIP AMONG SUCH EMPLOYEES AND THAT THEY WOULD HAVE TO HAVE OVER FIFTY PER CENT AS MEMBERS BEFORE SUCH AN AGREEMENT COULD BE CONTEMPLATED. HOWEVER, INFORMAL DISCUSSIONS CONTINUED TO TAKE PLACE BETWEEN LOCAL #1 AND REPRESENTATIVES OF THE M.C.A. OVER THE POSSIBILITY OF CONCLUDING AN AGREEMENT RESPECTING BRICKLAYERS' ASSISTANTS.

BY A NOTICE DATED FEBRUARY 10, 1966, LOCAL #1 CALLED A MEETING OF BRICKLAYERS' ASSISTANTS FOR FEBRUARY 22. THE WORDING OF THE NOTICE AND THE EVIDENCE RESPECTING THE MEETING ITSELF MAKE IT CLEAR THAT THE PURPOSE OF THE MEETING WAS TO CONTINUE THE LOCAL'S ORGANIZATIONAL DRIVE - THAT IS, TO PERSUADE THE BRICKLAYERS' ASSISTANTS IN THE RESIDENTIAL CONSTRUCTION INDUSTRY TO JOIN LOCAL #1. THE NOTICE WAS PREPARED BY JOHN MEORIN, A REPRESENTATIVE AND SECRETARY OF LOCAL #1. IT IS NOT CLEAR FROM THE EVIDENCE WHETHER, AT THE TIME THE NOTICE WAS PREPARED, MEORIN KNEW OF THE ORGANIZATIONAL DRIVE BEING ATTEMPTED BY THE APPLICANT AMONG BRICKLAYERS' ASSISTANTS, ALTHOUGH HE WAS AWARE OF THIS BY FEBRUARY 22ND.

THE MEETING WAS NOT WELL ATTENDED. MEORIN ESTIMATED THAT ABOUT THIRTY EMPLOYEES TURNED UP FROM SOME TWELVE DIFFERENT EMPLOYERS. ANOTHER WITNESS, NARDUCCI, SAID THERE WERE PERHAPS FIFTY PRESENT, ALTHOUGH IT COULD HAVE BEEN THIRTY OR FORTY. BOTH SAID THAT SOME EMPLOYEES OF THE RESPONDENT WERE THERE AND MEORIN ADMITTED IN RE-EXAMINATION BY COUNSEL FOR THE APPLICANT THAT SOME OF THE OBJECTORS WHO LATER SIGNED PETITIONS WERE PRESENT.

MEORIN APPEARS TO HAVE BEEN THE MAIN SPEAKER AND IT IS CLEAR FROM HIS TESTIMONY THAT HE WAS URGING THOSE IN ATTENDANCE, IN THE STRONGEST POSSIBLE TERMS TO JOIN LOCAL #1. HE ALSO TOLD THEM THAT LOCAL #1 AND THE M.C.A. WERE NEGOTIATING FOR A COLLECTIVE AGREEMENT. PRESENT THROUGHOUT THE WHOLE MEETING WERE ZACHARY DE VUONO, A PRINCIPAL OFFICER OF THE RESPONDENT, AND A MEMBER OF THE NEGOTIATING COMMITTEE OF THE M.C.A., AND LEONARD EDEN, THE EXECUTIVE VICE-PRESIDENT OF THE M.C.A. MR. EDEN IS ALSO CHAIRMAN OF THE ADVISORY COMMITTEE UNDER THE INDUSTRIAL STANDARDS ACT COVERING BRICKLAYERS IN THE METROPOLITAN TORONTO ZONE, AND, IN ADDITION, SERVES AS ADMINISTRATOR OF THE HEALTH AND WELFARE FUND SET UP BY LOCAL #1 AND THE M.C.A. FOR BRICKLAYERS COVERED BY THE COLLECTIVE AGREEMENT BINDING THESE TWO BODIES. BOTH DE VUONO AND EDEN WERE INVITED BY MEORIN TO BE PRESENT AND TO SPEAK. DE VUONO WAS ASKED TO DO SO A DAY OR TWO BEFORE THE MEETING WHEN HE DROPPED INTO THE LOCAL #1 OFFICE FOR A PURPOSE WHICH MEORIN COULD NOT RECALL. MEORIN TOLD HIM THE PURPOSE OF THE MEETING AND ASKED HIM TO BE PRESENT TO CONFIRM WHAT THE LOCAL UNION OFFICIALS SAID - THAT IS, THAT THEY WERE "NOT JUST BOASTING OR GIVING FALSE PROMISES".

DE VUONO WAS NOT CALLED TO TESTIFY. ACCORDING TO MEORIN, DE VUONO TOLD THE MEETING "WHAT THE SECRETARY (MEORIN) SAID WAS THE TRUTH. WE HAVE HAD NEGOTIATIONS AND I CAN PROMISE YOU YOU CAN HAVE A FAIR AGREEMENT." MEORIN TESTIFIED FURTHER THAT HE TOLD THE MEETING THE WAGES WOULD BE GOOD ALTHOUGH NOT YET SETTLED AND THIS WAS CONFIRMED BY MR. DE VUONO. ACCORDING TO MEORIN, DE VUONO SAID FURTHER, "IF YOU GET TOGETHER YOU WILL BE ORGANIZED JUST AS WELL AS THE BRICKLAYERS." LATER, UNDER CROSS-EXAMINATION MEORIN TESTIFIED THAT DE VUONO TOLD THE MEETING: "WHAT YOUR REPRESENTATIVE JUST SAID I'M HERE TO CONFIRM. WE ARE IN NEGOTIATIONS TO SIGN A COLLECTIVE AGREEMENT. I PROMISE YOU YOU WILL HAVE A FAIR AGREEMENT."

MR. EDEN, ACCORDING TO MEORIN, CAME TO ANSWER QUESTIONS ABOUT THE INDUSTRIAL STANDARDS ACT AND TO EXPLAIN THE HEALTH AND WELFARE SCHEME AND HOW TO APPLY FOR BENEFITS THEREUNDER. HE WENT THROUGH ALL THE DETAILS RELATING TO HEALTH AND WELFARE. WHY EDEN SHOULD HAVE BEEN ASKED TO GO INTO SUCH DETAIL WHEN THERE WAS AS YET NO COLLECTIVE AGREEMENT, NO HEALTH AND WELFARE PLAN AND NO SCHEDULE UNDER THE INDUSTRIAL STANDARDS ACT WAS NOT EXPLAINED. EDEN ALSO CONFIRMED WHAT MEORIN AND DE VUONO SAID RESPECTING THE NEGOTIATION OF A COLLECTIVE AGREEMENT. MEORIN COULD NOT RECALL WHETHER EDEN SPOKE TO THOSE PRESENT ABOUT JOINING THE UNION. MR. EDEN WAS NOT CALLED TO GIVE EVIDENCE.

FOLLOWING THE MEETING, THREE OFFICERS OF LOCAL #1 PROCEEDED TO SIGN UP BRICKLAYERS' ASSISTANTS IN ATTENDANCE AS MEMBERS OF LOCAL #1. DURING THIS ACTIVITY BOTH EDEN AND DE VUONO REMAINED IN THE MEETING ROOM. MEORIN TESTIFIED FURTHER THAT HE SPOKE TO DE VUONO BOTH BEFORE AND AFTER THE MEETING.

HAVING REGARD TO THE PURPOSE OF THE MEETING, THE EXISTENCE OF NEGOTIATIONS BETWEEN LOCAL #1 AND THE M.C.A. RESPECTING BRICKLAYERS' ASSISTANTS, THE OFFICIAL POSITIONS OF EDEN AND DE VUONO, THEIR PRESENCE AT A UNION ORGANIZATIONAL MEETING, WHAT WAS SAID BY THE SPEAKERS AND THE GENERAL BACKGROUND OF THE EXISTING COLLECTIVE AGREEMENT BETWEEN LOCAL #1 AND THE M.C.A. COVERING BRICKLAYERS, WE HAVE NO HESITATION IN FINDING THAT THE EMPLOYEES OF THE RESPONDENT PRESENT AT THE MEETING WOULD BELIEVE THAT DE VUONO, EDEN AND THE M.C.A. (AN EMPLOYERS' ORGANIZATION) WANTED THEM TO BECOME MEMBERS OF LOCAL #1 AND THAT IF THEY DID THEY WOULD GET GOOD WAGES, A FAIR AGREEMENT AND A HEALTH AND WELFARE SCHEME EQUIVALENT TO THAT OF THE BRICKLAYERS WITH WHOM THEY WORKED. SUCH A SITUATION, TO PUT IT IN ITS LOWEST KEY, WOULD UNDOUBTEDLY SERVE AS A STRONG INDUCEMENT TO JOIN LOCAL #1, AND WE HAVE NO DOUBT THIS IS WHAT HAPPENDED IN THIS CASE. AS WAS NOTED ABOVE, PRIOR TO THE MEETING, EIGHT OF THE TWELVE EMPLOYEES HAD JOINED THE APPLICANT TRADE UNION YET, EITHER AT OR WITHIN A FEW DAYS AFTER THE MEETING, ALL TWELVE JOINED LOCAL #1, DESPITE ITS PREVIOUS DIFFICULTIES IN ORGANIZATION. THE EVIDENCE OF MEMBERSHIP FILED BY LOCAL #1 WITH THE BOARD CONSISTED OF TWELVE APPLICATION FOR MEMBERSHIP CARDS, ALL OF WHICH WERE DATED FEBRUARY 22ND, THE DATE OF THE MEETING. WHILE IT MAY BE THAT NOT ALL TWELVE EMPLOYEES ATTENDED THE MEETING, WE ARE SATISFIED THAT ALL TWELVE WOULD BE COGNIZANT OF WHAT TRANSPIRED AT THAT MEETING. (ON THE QUESTION OF THE EFFECT OF EMPLOYERS' ACTIONS INFLUENCING THE WISHES OF EMPLOYEES SEE PIGOTT MOTORS, 63 C.L.L.C. 1125, C.L.S. 76-903; AIR LIQUIDE, O.L.R.B. MONTHLY REPORT, JANUARY, 1964, P. 558.)

WE TURN NOW TO CONSIDER THE MORE IMMEDIATE CIRCUMSTANCES SURROUNDING THE ORIGATION AND SIGNING OF THE PETITIONS. COLAROSSİ, WHO GAVE EVIDENCE RESPECTING NINE OF THE TWELVE PETITIONS, TESTIFIED THAT THE LABOURERS JUST GOT TOGETHER, THEY HAD BEEN DISCUSSING THE PRESENT APPLICATION AND THEY DECIDED ON A FRIDAY NIGHT TO MEET THE NEXT DAY AT THE OFFICE OF LOCAL #1. THE DECISION TO MEET WAS MADE OVER THE TELEPHONE. IN HIS WORDS, "AFTER WORK WE TELEPHONED ONE ANOTHER - I TELEPHONED TWO OR THREE." GIRIMONTE, A TENTH OBJECTOR, AGREED THAT ALL OF THE LABOURERS GOT TOGETHER AND WENT TO THE UNION OFFICE. THE ONLY DISCUSSION WAS BETWEEN FRIENDS AND OTHER LABOURERS. SOTTILE, THE ELEVENTH OBJECTOR, TESTIFIED THE ONLY DISCUSSION WAS BETWEEN FRIENDS. HE AGREED WITH COLAROSSİ THAT THEY ASKED MEORIN TO WRITE THE LETTER FOR THEM. THEIR EVIDENCE DOES NOT EXPLAIN HOW IT WAS THAT MEORIN WAS WAITING FOR THEM AT THE LOCAL UNION OFFICE.

THE TESTIMONY OF NARDUCCI (THE TWELFTH OBJECTOR) IS AT VARIANCE WITH THE OTHERS. HE TESTIFIED THAT HIS FOREMAN, GAETANO, "TOLD THREE OF US TO GO TO THE UNION OFFICE BECAUSE THERE WAS A LETTER THERE TO SIGN". HE WENT BECAUSE "I WAS WORKING FOR HIM AND HE (THE FOREMAN) TOLD US TO PASS THERE AND SIGN THE LETTER". WHEN HE ARRIVED AT THE LOCAL #1 OFFICE, MEORIN SAID, "HERE IS THE LETTER, SIGN."

ALTHOUGH COLAROSSİ, GIRIMONTE AND SOTTILE ALL TESTIFIED THEY SAW MEORIN TYPE THE LETTERS, MEORIN'S EVIDENCE IS THAT ON SATURDAY, MARCH 5TH, THE DATE ON THE PETITIONS, HIS SECRETARY, WHO NORMALLY WOULD NOT WORK ON SATURDAY, CAME TO THE OFFICE AND TYPED THE INDIVIDUAL PETITIONS IN TRIPPLICATE. MEORIN WENT ON TO SAY THAT HE SELDOM TYPES AND THE ONLY EXPLANATION HE COULD OFFER FOR THE OTHER WITNESSES' TESTIMONY WAS THAT THEY MAY HAVE SEEN HIM TYPING SOME OF THE ENVELOPES. THE SECRETARY'S INITIALS APPEAR ON THE PETITIONS AND IT SEEMS CLEAR THAT MEORIN'S VERSION IS CORRECT.

FURTHER, MEORIN TESTIFIED THAT HE KNEW THE EMPLOYEES WERE COMING ON SATURDAY BECAUSE HE CONTACTED THREE OR FOUR OF THEM BY TELEPHONE "A COUPLE OF NIGHTS BEFORE". HE ALSO CONTACTED A FOREMAN OF THE RESPONDENT, TONY FRANCO, AND ASKED HIM TO GIVE A MESSAGE TO THE LABOURERS TO COME OVER TO THE LOCAL #1 OFFICE ON SATURDAY. THE REASON HE TELEPHONED FRANCO WAS THAT HE WAS A MEMBER OF LOCAL #1, "HE WAS THE OLDEST EMPLOYEE THERE", AND HE WOULD HAVE THEIR TELEPHONE NUMBERS. MEORIN STATED THAT HE MADE THE CALLS FROM HIS OWN HOME IN THE EVENING AND WHILE AT THAT TIME ALL OF THE LABOURERS WERE MEMBERS OF LOCAL #1 AND HE THEREFORE HAD THEIR NUMBERS, THEY WERE AT THE OFFICE.

AFTER CAREFULLY CONSIDERING ALL OF THIS EVIDENCE, WE ARE SATISFIED THAT MEORIN WAS THE MOVING FORCE BEHIND THE ORIGINATION OF THE PETITIONS. IT IS ALSO CLEAR THAT HE PREPARED THEM AND THAT THEY WERE SIGNED AT THE LOCAL #1 OFFICE AND MAILED TO THE BOARD BY PERSONNEL FROM THAT LOCAL.

THERE REMAINS ONE FURTHER FACT TO BE RECORDED. SUBSEQUENT TO THE FILING OF THE PRESENT APPLICATION, NEGOTIATIONS BETWEEN LOCAL #1 AND THE M.C.A. CONTINUED WITH RESPECT TO BRICKLAYERS' ASSISTANTS OR LABOURERS AND ON MARCH 28, 1966 THEY ENTERED INTO AN AGREEMENT. THE RESPONDENT WAS A PARTY TO THAT AGREEMENT. AT THE TIME OF THE NEGOTIATIONS AND SIGNING BOTH LOCAL #1 AND THE RESPONDENT WERE NOT ONLY AWARE OF THIS APPLICATION BUT HAD ALSO PARTICIPATED IN A HEARING BEFORE THE BOARD. UNDER THE AGREEMENT DUES FOR BRICKLAYERS' ASSISTANTS OF THE RESPONDENT HAVE BEEN CHECKED-OFF. IN ADDITION, COUNSEL FOR THE RESPONDENT INFORMED THE BOARD THAT 10 CENTS AN HOUR WAS ALSO BEING DEDUCTED FROM THEIR WAGES TOWARDS THE HEALTH AND WELFARE PLAN, DESPITE THE FACT THAT AN AMENDMENT TO THE AGREEMENT COVERING THIS DEDUCTION, ALTHOUGH DRAFTED, HAD NOT BEEN EXECUTED.

WE TURN NOW TO A CONSIDERATION OF THE WEIGHT TO BE GIVEN THE PETITIONS. THE APPLICANT ARGUES THAT NO WEIGHT SHOULD ATTACH TO THEM BECAUSE OF EMPLOYER INFLUENCE AT THE FEBRUARY 22ND MEETING AND BECAUSE OF THE ACTIONS OF THE TWO FOREMEN, TONY FRANCO AND "GAETANO". IN CONTRAST TO THIS, COUNSEL FOR THE RESPONDENT AND FOR THE OBJECTORS SUBMIT THAT THE MEETING OF FEBRUARY 22ND IS TOO REMOTE FROM THE ACTIONS OF THE OBJECTORS TO HAVE ANY BEARING ON THE PETITIONS AND, EVEN IF THIS IS NOT THE CASE, NOTHING OCCURRED AT THE MEETING WHICH WAS IMPROPER. IN THEIR VIEW, HAVING REGARD TO THE LEGITIMATE AND CLOSE RELATIONSHIP WHICH EXISTED BETWEEN LOCAL #1 AND THE M.C.A. BY REASON OF THE BRICKLAYERS' AGREEMENT, THE SCHEDULE UNDER THE INDUSTRIAL STANDARDS ACT AND THE HEALTH AND WELFARE SCHEME (ON WHICH ADMITTEDLY THERE WAS A GOOD DEAL OF EVIDENCE) AND FURTHER HAVING REGARD TO WHAT WAS SAID, ALL THAT DE VUONO AND EDEN WERE SAYING IN EFFECT WAS THAT "WE CONFIRM THAT NEGOTIATIONS ARE UNDER WAY AND WE ASSURE YOU WE WILL BARGAIN IN GOOD FAITH." IT IS FURTHER ARGUED THAT THE FOREMEN IN QUESTION ARE WORKING FOREMEN, NORMALLY INCLUDED IN A BARGAINING UNIT AND THAT THESE FOREMEN (AND THE EVIDENCE SO ESTABLISHES) ARE COVERED BY THE BRICKLAYERS' AGREEMENT, ARE MEMBERS OF LOCAL #1 AND THEIR DUES ARE CHECKED-OFF.

DEALING FIRSTLY WITH THE QUESTION OF THE FEBRUARY 22ND MEETING, WE HAVE ALREADY FOUND THAT WHAT WAS SAID AT THE MEETING BY MEORIN, DE VUONO AND EDEN WOULD AND DID IN FACT SERVE AS A STRONG INDUCEMENT TO THE RESPONDENT'S LABOURERS TO JOIN LOCAL #1. REGARDLESS OF THE INTENTIONS OR MOTIVATIONS OF THE SPEAKERS, WHAT WAS SAID WENT MUCH FARTHER THAN MERELY CONFIRMING THAT THE M.C.A. WAS PREPARED TO BARGAIN IN GOOD FAITH AS ARGUED BY COUNSEL FOR THE RESPONDENT AND THE

OBJECTORS. IN FACT, IN OUR VIEW, WHAT TRANSPIRED AT THE MEETING CONSTITUTED PARTICIPATION IN AND AN INTERFERENCE WITH THE SELECTION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION WITHIN THE MEANING OF SECTION 48 OF THE LABOUR RELATIONS ACT.

THAT BEING THE CASE, WE ARE UNABLE TO AGREE THAT THE EVENTS OF THE MEETING OF FEBRUARY 22ND ARE SO REMOTE FROM THE PETITIONS IN THIS CASE AS NOT TO HAVE ANY INFLUENCE ON OBJECTORS. AS WE FOUND ABOVE, THE TWELVE LABOURERS WOULD BE WELL AWARE OF WHAT TRANSPIRED AT THE MEETING. IT WOULD THUS BE OBVIOUS TO THEM THAT THEIR EMPLOYER WAS NOT ONLY ON FRIENDLY TERMS WITH MEORIN, BUT WAS ALSO ACTUALLY ENCOURAGING THEM TO JOIN LOCAL #1. WITHIN A FEW DAYS THEREAFTER A NOTICE OF THE PRESENT APPLICATION WAS POSTED ON THE RESPONDENT'S PREMISES AND WITHIN A DAY OR TWO MEORIN WAS ACTIVELY SEEKING THEIR SUPPORT FOR A PETITION OPPOSING THIS APPLICATION. THERE IS NO DOUBT IN OUR MINDS THAT IN ALL THESE CIRCUMSTANCES WHAT TRANSPIRED AT THE MEETING WOULD HAVE A VERY STRONG EFFECT ON THE EMPLOYEES IN DECIDING WHETHER OR NOT TO SIGN THE PETITIONS OPPOSING THIS APPLICATION. IN THIS CONNECTION THE EVIDENCE OF NARDUCCI IS MOST ILLUMINATING. HE TESTIFIED THAT SOME OF THE OTHER LABOURERS WERE SAYING THAT "IF YOU DO NOT SIGN OR ATTEND THE MEETING, YOU MAY BE SENT AWAY!".

HAVING REGARD TO ALL THE EVIDENCE BEFORE US AND TO THE ABOVE CONSIDERATION, WE ARE SATISFIED THAT THE PETITIONS DO NOT WEAKEN THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT SO AS TO REQUIRE THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE. FURTHERMORE, IN THE CIRCUMSTANCES OF THIS CASE, WE FIND NO MERIT IN THE ARGUMENT THAT WE SHOULD EXERCISE OUR DISCRETION AND ORDER A VOTE UNDER SECTION 7(2) OF THE LABOUR RELATIONS ACT. ALTHOUGH IT IS PERHAPS UNNECESSARY TO EXPRESS ANY FINAL OPINION ON THE MATTER, EVEN IF WE HAD COME TO A DIFFERENT CONCLUSION ON EITHER POINT, WE WOULD HAVE BEEN DISPOSED TO FIND THAT A REPRESENTATION VOTE WOULD NOT IN THE CIRCUMSTANCES OF THIS CASE HAVE BEEN LIKELY TO DISCLOSE THE TRUE WISHES OF THE EMPLOYEES. IN REACHING THESE CONCLUSIONS IT HAS **NOT** BEEN NECESSARY TO CONSIDER THE ACTIONS OF THE FOREMEN NOR THEIR ALLEGED MANAGEMENT STATUS.

IN THE RESULT, THE BOARD FINDS FURTHER THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE APPLICANT HAS INDICATED THAT IT WISHES TO CHALLENGE THE RIGHT OF THE RESPONDENT TO INTRODUCE AND OF THE BOARD TO HEAR EVIDENCE RESPECTING THE RESPONDENT'S ALLEGATION THAT THE APPLICANT IS NOT A PROPER TRADE UNION TO REPRESENT THE RESPONDENT'S CONSTRUCTION LABOURERS IN THE CIRCUMSTANCES OF THE SUBURBAN BUILDING INDUSTRY. THE REGISTRAR IS DIRECTED TO LIST THE CASE FOR FURTHER HEARING IN ORDER TO HEAR THE REPRESENTATIONS OF THE PARTIES ON THIS MATTER.

11871-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. ROMAN RAILINGS CO. LTD. (RESPONDENT).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: A. E. GOLDEN AND G. HAUGHEY FOR THE APPLICANT,
W. FRAM AND V. COLUCCI FOR THE RESPONDENT.

DECISION OF THE BOARD: (OCTOBER 31, 1966).

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
2. THE APPLICANT IS APPLYING FOR A BARGAINING UNIT COMPOSED OF "ALL IRONWORKERS" IN THE EMPLOY OF THE RESPONDENT. THE BARGAINING UNIT PROPOSED BY THE RESPONDENT IS "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE FABRICATION AND ERECTION OF ORNAMENTAL IRON WORK AND ASSOCIATED PRODUCTS".
3. PARAGRAPH 6 OF FORM 56 (NOTICE OF APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY) ADDRESSED TO THE RESPONDENT READS TO THE EFFECT THAT IF THE RESPONDENT'S PROPOSED BARGAINING UNIT IS DIFFERENT FROM THAT PROPOSED BY THE APPLICANT, THE RESPONDENT SHOULD INDICATE IN ITS LIST OF EMPLOYEES THE NAMES AND CLASSIFICATIONS OF ANY PERSON THE RESPONDENT PROPOSES SHOULD BE EXCLUDED FROM OR ADDED TO THE BARGAINING UNIT PROPOSED BY THE APPLICANT. THE RESPONDENT IN ITS REPLY STATED THAT IT WAS NOT ABLE TO PLEAD TO PARAGRAPH 6 AS IT DID NOT KNOW WHAT EMPLOYEES THE APPLICANT PROPOSED TO INCLUDE IN ITS BARGAINING UNIT. THE RESPONDENT REQUESTED THAT THE APPLICANT BE REQUIRED TO PROVIDE THESE PARTICULARS AND THAT THE RESPONDENT BE ALLOWED TO FILE A FURTHER REPLY ONCE THAT INFORMATION WAS SUPPLIED. TOGETHER WITH ITS REPLY, THE RESPONDENT FILED A SCHEDULE A CONTAINING THE NAMES OF 14 PERSONS WHOM IT CLAIMS WERE ALL OF THE EMPLOYEES OF THE RESPONDENT ON JUNE 9TH, 1966, THE DATE OF THE MAKING OF THE APPLICATION.
4. BY A DECISION OF THE BOARD DATED JUNE 21ST, 1966, R. A. WOOLAND, EXAMINER, WAS AUTHORIZED TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT.
5. BY LETTER DATED JULY 25TH, THE SOLICITOR FOR THE RESPONDENT AGAIN SUBMITTED THAT IT WAS NOT ABLE TO PLEAD TO PARAGRAPH 6 OF FORM 56 FOR THE REASONS SET OUT IN THE RESPONDENT'S REPLY. BY LETTER DATED JULY 26TH, 1966, THE REGISTRAR IN ACCORDANCE WITH A DIRECTION FROM THE BOARD, POINTED OUT TO THE RESPONDENT'S SOLICITORS THAT AS A RESULT OF THE POSITION TAKEN BY THE RESPONDENT IN ITS REPLY, THE BOARD HAD APPOINTED AN EXAMINER TO INQUIRE INTO THE COMPOSITION OF THE BARGAINING UNIT AND THAT THE EXAMINER WAS CURRENTLY MEETING WITH THE PARTIES ON THE MATTER. THE REGISTRAR IN HIS LETTER TO THE RESPONDENT'S SOLICITORS FURTHER STATED THAT WHEN THE EXAMINATION HAD BEEN COMPLETED AND A REPORT MADE BY THE EXAMINER, THE RESPONDENT WOULD HAVE THE NECESSARY PARTICULARS UPON WHICH TO MAKE ITS REPRESENTATIONS WITH RESPECT TO THE BARGAINING UNIT.
6. ON SEPTEMBER 2ND, 1966 THE EXAMINER ISSUED HIS REPORT DATED AUGUST 26TH, 1966. THE FORM 47 (NOTICE OF REPORT OF EXAMINER) WHICH ACCOMPANIED THE COPY OF THE REPORT SENT OUT TO THE APPLICANT AND THE RESPONDENT GAVE THE PARTIES UNTIL SEPTEMBER 12TH, 1966 TO FILE A STATEMENT OF OBJECTION TO THE REPORT. NO OBJECTIONS TO THE REPORT WERE FILED BY EITHER PARTY AS OF THAT DATE OF THEREAFTER.
7. THE REPORT OF THE EXAMINER SHOWS THAT MR. WALLACE FRAM COUNSEL FOR THE RESPONDENT WAS IN ATTENDANCE AT THE FOUR MEETINGS HELD WITH THE EXAMINER ON

JULY 5TH, 11TH, 21ST AND 27TH. ON PAGE ONE OF THE REPORT THE EXAMINER STATES THAT HE CHECKED THE RESPONDENT'S RECORDS WHICH SHOWED THAT 13 OF THE 14 PERSONS LISTED ON SCHEDULE A WERE IN THE EMPLOY OF THE RESPONDENT ON THE DATE OF THE APPLICATION. (A. BIANCHI WAS NOT AT WORK ON JUNE 9TH. THE BOARD ACCORDINGLY REMOVES HIS NAME FROM SCHEDULE A FOR PURPOSES OF THE COUNT).

8. ON PAGE TWO OF THE REPORT, THE EXAMINER STATES THAT FOLLOWING INFORMAL DISCUSSIONS THE PARTIES SIGNED AN AGREEMENT TO THE EFFECT THAT "THE RESPONDENT FABRICATES IRON, STEEL AND ALUMINUM PRODUCTS IN ITS SHOP AT DOWNSVIEW FOR SUBSEQUENT INSTALLATION AT ITS JOB SITES. IT ALSO ASSEMBLES AND INSTALLS BOUGHT OUT PARTS, SUB-ASSEMBLIES AND ASSEMBLIES AT ITS JOB SITES. ALL ITS PRODUCTS ARE ASSEMBLED AND INSTALLED BY IT. THE EMPLOYEES LISTED BY THE RESPONDENT (SCHEDULE A) CARRY OUT ALL OR ANY OF THE ABOVE WORK". AS WELL, SIX PAGES OF THE EXAMINER'S REPORT (PAGES 21-24 AND 26-28) ARE LARGELY TAKEN UP WITH THE EVIDENCE OF VITO COLUCCI, THE PRESIDENT AND SOLE MANAGER OF THE RESPONDENT, AS TO THE NATURE AND OPERATION OF THE RESPONDENT'S BUSINESS. THE REMAINDER OF COLUCCI'S EVIDENCE IN THE REPORT RELATES TO THE DUTIES AND RESPONSIBILITIES OF TWO EMPLOYEES, GUTEULIO PAGLIAROLI AND ANTONIO PITOSCIA.

9. MOST OF THE EXAMINER'S REPORT CONTAINS THE EVIDENCE OF SEVEN OF THE THIRTEEN EMPLOYEES LISTED ON SCHEDULE A WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES. THERE IS NO EVIDENCE IN THE REPORT RELATING TO THE REMAINING SIX EMPLOYEES ON SCHEDULE A. WE WOULD MENTION AT THIS POINT, HOWEVER, THAT THE LAST PARAGRAPH OF THE REPORT STATES THAT THE PARTIES WERE AFFORDED FULL OPPORTUNITY TO BE HEARD, TO EXAMINE AND CROSS-EXAMINE WITNESSES AND TO INTRODUCE EVIDENCE BEARING ON THE ISSUES BEFORE THE EXAMINER.

10. THE BOARD LISTED THIS MATTER FOR HEARING ON OCTOBER 24TH, 1966. THE NOTICE OF THE HEARING STATED THAT THE PURPOSE OF THE HEARING WAS TO PERMIT THE PARTIES TO ADDUCE EVIDENCE AND TO MAKE REPRESENTATIONS WITH RESPECT TO THE FOLLOWING ALLEGATIONS MADE BY THE RESPONDENT:

- (1) THAT THE APPLICANT IS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OR WITHIN THE MEANING OF SECTION 90(B) OF THE ACT.
- (2) THAT SOME OR ALL OF THE APPLICATIONS FOR MEMBERSHIP SECURED BY THE APPLICANT WERE OBTAINED BY FRAUD OR MISREPRESENTATION.
- (3) THAT THE APPLICANT IS NOT THE APPROPRIATE BARGAINING AGENT FOR THE BARGAINING UNIT WHICH THE RESPONDENT CLAIMS IS APPROPRIATE.

THE BOARD ALSO STATED IN ITS NOTICE THAT IT WOULD ENTERTAIN THE REPRESENTATIONS OF THE PARTIES ON ALL MATTERS RELATING TO THE BARGAINING UNIT INCLUDING THE REPORT OF THE EXAMINER DATED AUGUST 26TH, 1966, AND ALL OTHER OUTSTANDING MATTERS.

11. AT THE OUTSET OF THE HEARING ON OCTOBER 24TH, COUNSEL FOR THE RESPONDENT, MR. FRAM, WITHDREW THE RESPONDENT'S ALLEGATIONS RELATING TO ITEMS NUMBER (1) AND (2) ABOVE. (THERE HAD BEEN A PREVIOUS HEARING ON AN ALLEGATION MADE BY THE RESPONDENT OF NON-PAYMENT OF THE INITIATION FEE ON AN APPLICATION FOR MEMBERSHIP FILED BY THE APPLICANT WHICH THE BOARD HAD DISPOSED OF BY A DECISION DATED SEPTEMBER 1ST, 1966). THE BOARD THEREUPON CALLED UPON THE PARTIES FOR THEIR REPRESENTATIONS CONCERNING THE BARGAINING UNIT AND ITEM NUMBER (3) OF THE NOTICE OF HEARING.

12. COUNSEL FOR THE RESPONDENT THEREUPON INFORMED THE BOARD THAT HE WISHED TO CALL VITO COLUCCI AS A WITNESS FOR THE PURPOSE OF ADDUCING FURTHER EVIDENCE. UPON INQUIRY BY THE BOARD, COUNSEL STATED THAT IT HAD NOT BEEN CLEAR TO HIM WHETHER THE TERMS OF REFERENCE IN THE EXAMINER'S APPOINTMENT ENCOMPASSED AN INQUIRY INTO THE NATURE OF THE RESPONDENT'S OPERATION. BECAUSE OF THIS UNCERTAINTY ON HIS PART COUNSEL SAID THAT HE HAD NOT PURSUED THIS LINE OF INQUIRY AS FULLY AS HE OTHERWISE WOULD HAVE DONE. HE ACCORDINGLY ASKED LEAVE OF THE BOARD TO ADDUCE EVIDENCE FROM COLUCCI AS TO THE NATURE OF THE RESPONDENT'S OPERATION. COUNSEL FOR THE RESPONDENT ALSO INFORMED THE BOARD THAT HE WISHED TO ADDUCE FURTHER EVIDENCE FROM COLUCCI AS TO THE DUTIES AND RESPONSIBILITIES OF THE PERSONS ON SCHEDULE A INCLUDING THE SIX EMPLOYEES CONCERNING WHOM THERE WAS NO EVIDENCE IN THE EXAMINER'S REPORT. IN MAKING THE LATTER REQUEST COUNSEL ADMITTED THAT HE HAD HAD AN OPPORTUNITY TO ADDUCE THIS EVIDENCE BEFORE THE EXAMINER AND THAT HIS FAILURE TO DO SO WAS AN OVERSIGHT ON HIS PART. COUNSEL ARGUED, HOWEVER, THAT IN THE ABSENCE OF ANY EVIDENCE RELATING TO THE JOB FUNCTIONS OF THE SIX EMPLOYEES NOT INCLUDED IN THE REPORT, THE BOARD COULD NOT MAKE AN ADJUDICATION ON THE APPLICATION.

13. COUNSEL FOR THE APPLICANT SUBMITTED THAT THE RESPONDENT COULD HAVE AND PROPERLY SHOULD HAVE ADDUCED ALL THE EVIDENCE WHICH HE NOW WANTED TO ADVANCE BEFORE THE BOARD, AT THE HEARINGS BEFORE THE EXAMINER. COUNSEL FOR THE APPLICANT ACCORDINGLY OBJECTED TO THE RESPONDENT BEING ALLOWED TO ADDUCE FURTHER EVIDENCE AT THE HEARING ON OCTOBER 24TH.

14. UPON CONSIDERING THE REQUEST OF COUNSEL FOR THE RESPONDENT AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD WAS OF THE OPINION THAT THE SCOPE OF THE AUTHORITY GIVEN TO THE EXAMINER WAS SUFFICIENTLY WIDE TO ENCOMPASS INQUIRIES WITH REGARD TO THE RESPONDENT'S OPERATION, AND AS THE REPORT SHOWS, COUNSEL FOR THE RESPONDENT DID ADDUCE CONSIDERABLE EVIDENCE ON THIS TOPIC. HAVING REGARD TO THE EXACT WORDING OF THE DIRECTION TO THE EXAMINER, HOWEVER, THE BOARD WAS OF THE VIEW THAT COUNSEL FOR THE RESPONDENT POSSIBLY WAS IN DOUBT AS TO THE EXTENT TO WHICH HE COULD PURSUE HIS INQUIRY ON THIS SUBJECT. THE BOARD ACCORDINGLY RULED THAT COUNSEL FOR THE RESPONDENT WOULD BE PERMITTED TO CALL COLUCCI AS A WITNESS AND ADDUCE FURTHER EVIDENCE AS TO THE NATURE OF THE RESPONDENT'S OPERATION BUT THAT SUCH INQUIRY WOULD BE CONFINED TO MATTERS WHICH WERE NOT ALREADY CONTAINED IN THE EXAMINER'S REPORT. COUNSEL FOR THE RESPONDENT ELECTED NOT TO CALL ANY FURTHER EVIDENCE.

15. THE BOARD FURTHER WAS OF THE OPINION THAT THE RESPONDENT HAD BEEN GIVEN A FULL OPPORTUNITY AT THE HEARINGS BEFORE THE EXAMINER TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF ALL THOSE PERSONS WHOSE NAMES APPEARED ON SCHEDULE A. THE BOARD ACCORDINGLY RULED THAT IT WAS NOT PREPARED AT THE HEARING ON OCTOBER 24TH TO ALLOW THE RESPONDENT TO ADDUCE FURTHER EVIDENCE FROM COLUCCI RELATING TO THE JOB FUNCTIONS OF THESE EMPLOYEES.

16. WE WOULD POINT OUT THAT BOTH PARTIES WERE FULLY AWARE OF THE NAMES OF ALL OF THE EMPLOYEES LISTED ON SCHEDULE A. NO CHALLENGE, HOWEVER, WAS MADE WITH REGARD TO SIX OF THE EMPLOYEES ON THE SCHEDULE. THE BOARD THEREFORE MUST ASSUME THAT THE PARTIES WERE IN AGREEMENT THAT THESE SIX EMPLOYEES WERE APPROPRIATE FOR INCLUSION IN ANY UNIT WHICH THE BOARD FOUND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING.

17. COUNSEL FOR THE RESPONDENT SUBMITS THAT SINCE THE EMPLOYEES OF THE RESPONDENT ARE ENGAGED IN THE FABRICATION OF ORNAMENTAL IRON IN THE SHOP AND INSTALLATION AND ERECTION IN THE FIELD AND SINCE THESE EMPLOYEES WORK BOTH IN THE SHOP AND IN THE FIELD, THE ONLY FEASIBLE BARGAINING UNIT IS AN "ALL EMPLOYEE" UNIT ENCOMPASSING THE RESPONDENT'S OPERATIONS IN BOTH "INSIDE" AND "OUTSIDE". THE RESPONDENT FURTHER SUBMITS THAT THE APPLICANT'S JURISDICTION IS CONFINED TO FIELD OR "OUTSIDE" EMPLOYEES ENGAGED IN THE INSTALLATION AND ERECTION OF ORNAMENTAL IRON. THE RESPONDENT ACCORDINGLY ARGUES THAT THE APPLICANT IS NOT THE PROPER BARGAINING AGENT FOR THE UNIT OF EMPLOYEES WHICH THE RESPONDENT CLAIMS IS THE ONLY ONE THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING. THE RESPONDENT ALSO ARGUES THAT THE "ALL EMPLOYEE" UNIT WHICH IT PROPOSES DOES NOT FALL WITHIN THE PURVIEW OF THE CONSTRUCTION INDUSTRY SECTION OF THE ACT.

18. COUNSEL FOR THE APPLICANT WHILE NOT ADMITTING THE LIMITATION ON ITS JURISDICTION ALLEGED BY THE RESPONDENT ARGUES THAT THE QUESTION OF ITS JURISDICTION IS NOT RELEVANT. COUNSEL SUBMITS THAT BY ESTABLISHED PRACTICE, WHICH LONG HAS BEEN RECOGNIZED BY THE BOARD, THE APPLICANT HAS BARGAINING FOR THE CRAFT OF IRON WORKERS ENGAGED IN FIELD INSTALLATION AND ERECTION WORK, AND THAT IS THE UNIT OF EMPLOYEES FOR WHICH THE APPLICANT IS APPLYING.

19. SINCE ITS DECISION IN THE ART WIRE & IRON CO. LTD. CASE, (1954) CCH CLLR TRANSFER BINDER 1949-1954, ¶17,080, THE BOARD HAS RECOGNIZED EMPLOYEES ENGAGED IN FIELD INSTALLATION AND ERECTION AS A CRAFT GROUP AND HAS RECOGNIZED THE ENTITLEMENT OF THE APPLICANT TO BARGAIN ON THEIR BEHALF. IN THE SAME DECISION, THE BOARD NOTED THAT WHILE OFTEN THERE WAS SOME INTERCHANGE OF EMPLOYEES BETWEEN SHOP AND FIELD WORK, THIS FACT WAS NOT AN IMPEDIMENT TO GRANTING SEPARATE BARGAINING UNITS FOR "INSIDE" AND "OUTSIDE" EMPLOYEES. IN DETERMINING THE COMPOSITION OF THESE BARGAINING UNITS, THE PRACTICE OF THE BOARD HAS BEEN TO INCLUDE THOSE EMPLOYEES WHO ARE PRIMARILY ENGAGED IN FIELD INSTALLATION AND ERECTION IN THE "OUTSIDE" UNIT AND TO INCLUDE THOSE EMPLOYEES WHO PRIMARILY WORK IN THE SHOP IN THE "INSIDE" UNIT.

20. COUNSEL FOR THE RESPONDENT SUBMITTED THAT THE APPLICANT HAD NOT CLEARLY INDICATED WHICH EMPLOYEES IT CLAIMED WERE APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT IT PROPOSED. COUNSEL FOR THE APPLICANT STATED THAT THE DEFINITION OF "IRON WORKERS" APPLIED BY THE BOARD IS SET OUT IN THE ANGLIN-NORCOSS ONTARIO LIMITED CASE (1964) O.L.R.B. MONTHLY REPORT, DECEMBER 1964, P. 401. IN THAT DECISION, BY WAY OF A CLARITY NOTE, THE BOARD DECLARED THAT THE TERM "IRON WORKERS" INCLUDED RIGGERS, WELDERS, MACHINERY MOVERS, SASH AND DOOR ERECTORS AND ORNAMENTAL IRON WORKERS. COUNSEL, ON THE BASIS OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, MADE HIS REPRESENTATIONS AS TO WHICH EMPLOYEES OF THE RESPONDENT ON SCHEDULE A WERE APPROPRIATE FOR INCLUSION IN THE PROPOSED BARGAINING UNIT.

21. THE BOARD HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES WITH REGARD TO THE APPROPRIATE BARGAINING UNIT AND THE REPORT OF THE EXAMINER FIRST OF ALL FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

22. THE BOARD FURTHER FINDS THAT ALL IRON WORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND

INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

23. IN DETERMINING WHICH EMPLOYEES OF THE RESPONDENT ARE APPROPRIATE FOR INCLUSION IN THE ABOVE BARGAINING UNIT THE BOARD HAS CONSIDERED THE DEFINITION OF "IRON WORKERS" IN THE ANGLIN-NORCOSS ONTARIO LIMITED CASE (SUPRA). THE BOARD ALSO HAS FOLLOWED ITS USUAL PRACTICE OF INCLUDING IN THE "OUTSIDE" UNIT FOR WHICH THE APPLICANT IS SEEKING CERTIFICATION THOSE IRON WORKERS PRIMARILY ENGAGED IN FIELD INSTALLATION AND ERECTION. APPLYING THE ABOVE CRITERIA THE BOARD MAKES THE FOLLOWING FINDINGS ON THE BASIS OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT EXAMINED THEREIN:

E. BALDASSARA IS AN IRON WORKER PRIMARILY ENGAGED IN FIELD INSTALLATION AND ERECTION WORK AND IS INCLUDED IN THE BARGAINING UNIT.

GUTEULIO PAGLIAROLI IS AN IRON WORKER PRIMARILY ENGAGED IN FIELD INSTALLATION AND ERECTION WORK AND IS INCLUDED IN THE BARGAINING UNIT.

ANTONIO PITOSCIA IS AN IRON WORKER PRIMARILY ENGAGED IN FIELD INSTALLATION AND ERECTION WORK AND IS INCLUDED IN THE BARGAINING UNIT.

AMERICO MARTIGNAGO IS PRIMARILY ENGAGED IN WORK IN THE RESPONDENT'S SHOP AND IS NOT INCLUDED IN THE BARGAINING UNIT.

ROSARIO MARCHELLO IS EMPLOYED BY THE RESPONDENT AS A CARPENTER AND IS NOT INCLUDED IN THE BARGAINING UNIT.

FILIPPOS SCHIEDA IS EMPLOYED EXCLUSIVELY IN THE RESPONDENT'S SHOP AND IS NOT INCLUDED IN THE BARGAINING UNIT.

LUIGI IZZO IS EMPLOYED BY THE RESPONDENT AS A LABOURER AND IS NOT INCLUDED IN THE BARGAINING UNIT.

24. IN SUMMARY, OF THE SEVEN EMPLOYEES WITH REGARD TO WHOM THERE IS EVIDENCE RELATING TO THEIR DUTIES AND RESPONSIBILITIES IN THE REPORT OF THE EXAMINER, THREE ARE INCLUDED IN THE BARGAINING UNIT. TAKEN TOGETHER WITH THE REMAINING SIX EMPLOYEES OF THE RESPONDENT WHOSE NAMES APPEAR ON SCHEDULE A (WHO, AS MENTIONED EARLIER, WERE NOT CHALLENGED BY EITHER THE APPLICANT OR THE RESPONDENT) THERE ARE A TOTAL OF NINE PERSONS IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE BY THE BOARD FOR THE PURPOSES OF THE COUNT. THE APPLICANT FILED WITH THE BOARD EVIDENCE OF MEMBERSHIP FOR SIX OF THESE NINE EMPLOYEES. (EVEN IF THE SIX WERE NOT INCLUDED IN THE BARGAINING UNIT FOR THE PURPOSES OF THE COUNT IT WOULD NOT ON A PERCENTAGE BASIS AFFECT THE MEMBERSHIP POSITION OF THE APPLICANT).

25. THE BOARD ACCORDINGLY IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

26. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12057-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE MUNICIPALITY OF NEEBING (RESPONDENT) V. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 268 (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND D. W. FORGIE.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER D. W. FORGIE: (OCTOBER 17, 1966).

1. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUB-SECTION 3 OF SECTION 41 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED SEPTEMBER 27TH, 1966, IN THIS MATTER.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1) (J) OF THE LABOUR RELATIONS ACT.

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT NEEBING TOWNSHIP, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, THE BOARD FINDS THAT WHILE DUNCAN MARTYN, JAMES MORRISON, JACK STUART AND MIKE HIRCHOK HAVE SOME SUPERVISORY FUNCTIONS, THEY ARE IN ADDITION TO THEIR MAIN JOB WHICH REQUIRES THEM TO OPERATE BULLDOZERS OR TRACTORS OR USE CERTAIN HAND TOOLS IN THE PERFORMANCE OF THEIR WORK ON THE RESPONDENT'S ROADS. THE SUPERVISORY FUNCTIONS WHICH ARE USUALLY EXERCISED WITH RESPECT TO ONLY TWO OR THREE EMPLOYEES ARE MERELY INCIDENTAL TO THEIR MAIN FUNCTIONS WHICH REQUIRE THAT THEY PERFORM WORK ALONG WITH THE PEOPLE THEY SUPERVISE AND ARE EXERCISED SUBJECT TO THE CONTROL AND DIRECTION OF THE RESPONDENT'S ROADS SUPERINTENDENT.

5. HAVING REGARD TO THE DECISION OF THE BOARD IN THE FALCONBRIDGE NICKEL MINE CASE, BOARD FILE 10775-65-R, SEPTEMBER 14, 1966, WE MUST FIND THAT THE SUPERVISORY FUNCTIONS EXERCISED BY THE PERSONS IN QUESTION CANNOT, IN THE CIRCUMSTANCES DESCRIBED ABOVE, BE CHARACTERIZED AS MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. THE BOARD THEREFORE FINDS THAT DUNCAN MARTY, JAMES MORRISON, JACK STUART AND MIKE HIRCHOK DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE INCLUDED IN THE BARGAINING UNIT.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER F. W. MURRAY: (OCTOBER 17, 1966).

I DISSENT WITH RESPECT TO THAT PORTION OF THE MAJORITY DECISION DEALING WITH MESSRS. MARTY, MORRISON AND STUART. I WOULD FIND THAT DUNCAN MARTYN, JAMES MORRISON AND JACK STUART EXERCISE MANAGERIAL FUNCTIONS WHICH ARE MORE THAN INCIDENTAL TO THEIR OTHER FUNCTIONS AND ARE AN ESSENTIAL PART OF THEIR TOTAL JOB CONTENT AND SHOULD BE CLASSIFIED AS MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT, AND I WOULD THEREFORE NOT HAVE INCLUDED THEM IN THE BARGAINING UNIT.

12067-66-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. YVAN SIMARD (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: L. A. MACLEAN, JOHN LEBLANC AND CHARLES CARON FOR THE APPLICANT, WARREN K. WINKLER FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN: (OCTOBER 17, 1966).

1. THE NAME "YVAN SIMARD - CONTRACTOR" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "YVAN SIMARD"

2. THIS IS AN APPLICATION FOR CERTIFICATION.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

4. THE RESPONDENT OPERATES A SAWMILL IN THE BUSH IN THAKERY TOWNSHIP IN THE DISTRICT OF COCHRANE, THE RESPONDENT'S EMPLOYEES LIVE IN BUNKHOUSES ADJACENT TO THE SAWMILL. APPROXIMATELY THREE MILES FROM THE RESPONDENT'S OPERATION FELDMAN TIMBER (MATHESON) LIMITED WAS ENGAGED IN CUTTING SAW LOGS FROM THE FOREST WHICH WERE TRUCKED TO THE RESPONDENT'S SAWMILL.

5. ON OR ABOUT JULY 26TH, 1966, THE DAY PRIOR TO THE EVENTS IN QUESTION, THE EMPLOYEES OF FELDMAN TIMBER (MATHESON) LIMITED WHO WERE REPRESENTED BY THE APPLICANT ENGAGED IN A STRIKE FOLLOWING ABOUT FIVE MONTHS OF UNSUCCESSFUL BARGAINING.

6. ON JULY 27TH, 1966, CHARLES CARON AND JEAN LEBLANC, OFFICERS AND ORGANIZERS OF THE APPLICANT, AFTER SPENDING THE DAY SUPERVISING THE STRIKE BY THE FELDMAN EMPLOYEES, DECIDED TO ORGANIZE THE EMPLOYEES OF THE RESPONDENT. TO THIS END, MESSRS. CARON AND LEBLANC ENLISTED THE ASSISTANCE OF MR. MILLAIRE, ONE OF THE FELDMAN EMPLOYEES, AND DROVE TO THE RESPONDENT'S SAWMILL. THE THREE ORGANIZERS WERE ACCOMPANIED BY TWO OTHER STRIKING EMPLOYEES IN THEIR CAR. SOME OF THE OTHER STRIKES, HAVING BEEN ADVISED OF THE APPLICANT'S PROPOSED ORGANIZING ATTEMPT, FOLLOWED THE THREE ORGANIZERS IN FIVE OR SIX OTHER CARS.

7. AT ABOUT 6:30 P.M. ON JULY 27TH, THE APPLICANT'S THREE ORGANIZERS ARRIVED AT THE RESPONDENT'S SAWMILL TOGETHER WITH SOMEWHERE BETWEEN TWENTY-FIVE TO THIRTY-FIVE OF THE FELDMAN STRIKERS. INCLUDED AMONG THE FELDMAN STRIKERS WERE TWO INTOXICATED PERSONS WHO WERE DESCRIBED BY ONE OF THE WITNESSES AS "TWO BIG LUMBERJACKS". THE ORGANIZERS APPROACHED THE RESPONDENT AND SOUGHT PERMISSION TO SPEAK TO THE RESPONDENT'S EMPLOYEES IN THE BUNKHOUSES. ALTHOUGH THE RESPONDENT REFUSED TO GRANT HIS PERMISSION, THE ORGANIZERS AND THEIR FOLLOWERS WERE NOT DETERRED. OTHER THAN REFUSING TO GRANT PERMISSION, THE RESPONDENT MADE NO ATTEMPT TO STOP THE ORGANIZERS. THE APPLICANT'S SUPPORTERS GATHERED MOST OF THE RESPONDENT'S EMPLOYEES INTO THE LARGEST BUNKHOUSE AND PROCEEDED TO ADVISE THEM OF THE PURPOSE OF THEIR VISIT. FOLLOWING THE MEETING IN THE BUNKHOUSE THE APPLICANT'S ORGANIZERS COMMENCED TO SIGN UP THE RESPONDENT'S EMPLOYEES AND SUCCEEDED IN SIGNING TWENTY-SEVEN MEMBERSHIP CARDS WHICH REPRESENTED VIRTUALLY ALL OF THE RESPONDENT'S EMPLOYEES WITH THE EXCEPTION OF THE RESPONDENT'S SON, ONE OTHER EMPLOYEE WHO WAS UNABLE TO PAY THE INITIATION FEE, AND TWO OTHER PERSONS. IT APPEARS FROM THE EVIDENCE THAT NONE OF THE RESPONDENT'S EMPLOYEES ASKED QUESTIONS OR MADE ANY COMMENTS DURING THE MEETING IN THE BUNKHOUSE. THE APPLICANT COMPLETED ITS CAMPAIGN AND LEFT THE RESPONDENT'S CAMP AT APPROXIMATELY 10:30 P.M.

8. THE APPLICANT'S OFFICIALS MADE NO ATTEMPT TO PREVENT THE STRIKING EMPLOYEES FROM ACCOMPANYING THEM BUT, ON THE CONTRARY, TRANSPORTED TWO OF THE STRIKING EMPLOYEES IN THEIR CAR.

9. ALL OF THE WITNESSES TESTIFIED THAT BOTH CARON AND LEBLANC WERE VERY POLITE TO THE RESPONDENT'S EMPLOYEES.

10. THE APPLICANT ARGUED THAT THE EVENTS SET OUT ABOVE IN NO WAY REFLECTS UPON THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT. THE APPLICANT TOOK THE POSITION THAT THE FELDMAN STRIKERS WHO ACCOMPANIED THE ORGANIZERS WERE SIMPLY UN-INVITED GUESTS AND THERE IS NOTHING BEFORE THE BOARD WHICH REFLECTS UPON THE CONDUCT OF THE APPLICANT'S ORGANIZERS OR THE MEMBERSHIP CARDS SIGNED BY THEM.

11. WE ARE UNABLE TO ACCEPT THE APPLICANT'S POSITION. APART FROM ASKING THE TWO INTOXICATED STRIKERS TO STOP PERSTERING THE RESPONDENT'S EMPLOYEES, WE WOULD FIND THAT THE PRESENCE OF THE STRIKERS WAS NOT ONLY ANTICIPATED BY THE APPLICANT'S OFFICIALS BUT WAS CONDONED AND ENCOURAGED BY THEM. IN THESE CIRCUMSTANCES, THE APPLICANT'S OFFICIALS MUST BE HELD RESPONSIBLE NOT ONLY FOR THE PRESENCE OF THE STRIKERS BUT FOR EVERYTHING SAID AND DONE BY THEM. EVEN IN THE ABSENCE OF THREATENING WORDS OR GESTURES THE MERE PRESENCE OF SUCH A LARGE GROUP OF SUPPORTERS IN CIRCUMSTANCES WHERE THEY ENTER THE RESPONDENT'S CAMP IN SPITE OF THE RESPONDENT'S REFUSAL TO GRANT HIS PERMISSION TO DO SO AND WHERE THEY ARE KNOWN TO THE RESPONDENT'S EMPLOYEES TO BE STRIKING EMPLOYEES FROM THE FELDMAN TIMBER OPERATIONS

IS, IN ITSELF, IN OUR VIEW, SUFFICIENT TO CAUSE THE BOARD TO PLACE NO RELIANCE UPON THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT.

12. THE FACTS OUTLINED ABOVE ARE OPEN TO NO OTHER INTERPRETATION THAN THAT THE APPLICANT'S OFFICIALS INTENDED TO PRODUCE A SHOW OF FORCE WHICH WOULD ASSIST THEM IN THEIR CAMPAIGN. THIS SHOW OF FORCE WOULD OF NECESSITY TEND TO INTIMIDATE THE RESPONDENT'S EMPLOYEES AND WOULD BE SUFFICIENT TO DEPRIVE THEM OF THE EXERCISE OF THEIR FREE CHOICE TO JOIN THE APPLICANT UNION AS PROVIDED FOR IN SECTION 3 OF THE LABOUR RELATIONS ACT.

13. THE TACTICS USED IN THIS CASE, FOR WHICH THE APPLICANT'S OFFICIALS MUST BE HELD RESPONSIBLE, IN OUR VIEW, FALL WITHIN THE PROHIBITION OF SECTION 52 OF THE ACT.

14. BECAUSE WE HAVE ALREADY FOUND THAT WE CANNOT PLACE RELIANCE ON THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT, IT IS NOT NECESSARY FOR US TO DEAL WITH THE EVIDENCE OF ONE OF THE RESPONDENT'S WITNESSES WHEREIN HE STATED THAT WHEN HE AT FIRST REFUSED TO SIGN A MEMBERSHIP CARD HE WAS INVITED TO "TAKE A WALK DOWN THE ROAD" WITH THE TWO INTOXICATED LUMBERJACKS.

15. HAVING REGARD TO THE BOARD'S DECISIONS IN THE CANADIAN FABRICATED PRODUCTS LIMITED (STRATFORD) CASE, CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1954-1959, ¶17,090 AND THE MILNET MINES CASE, (1953) CCH CANADIAN LABOUR LAW REPORTER, ¶17,063; C.L.S. 76-407, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT AND FOR THE REASONS OUTLINED ABOVE THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT THE BOARD MIGHT DEEM TO BE APPROPRIATE, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

16. THE APPLICATION IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: (OCTOBER 17, 1966).

1. I DISSENT. THE RESPONDENT HAS MADE ALLEGATIONS THAT THE APPLICANT UNION "COERCED THE EMPLOYEES OF THE RESPONDENT INTO SIGNING APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT TRADE UNION, OR SIMILAR DOCUMENTS, AND FORCED THE SAID EMPLOYEES OF THE RESPONDENT TO PAY CERTAIN AMOUNTS OF MONEY TO THE SAID APPLICANT." PARTICULARS OF THE CHARGES MADE BY THE RESPONDENT ARE SET OUT BELOW:

THE RESPONDENT SAYS THAT ALL OF THE EMPLOYEES OF THE RESPONDENT WERE INTIMIDATED OR COERCED BY MESSRS. CHARLES CARON OR JEAN LEBLANC, OFFICERS OR OFFICIALS OF THE APPLICANT, WHEN THEY BROUGHT TO THE RESPONDENT'S LUMBER CAMP APPROXIMATELY 40 MEMBERS OF THE APPLICANT FOR THE PURPOSE OF INTIMIDATING AND COERCING THE EMPLOYEES OF THE RESPONDENT IN THE MANNER AND FOR THE PURPOSE MENTIONED IN THE CHARGES.

IN PARTICULAR, THE RESPONDENT ALLEGES THAT THE SAID CHARES CARON OR JEAN LEBLANC, OR CERTAIN MEMBERS OF THE APPLICANT WHO ACCOMPANIED THEM AND WHO ARE UNKNOWN TO THE RESPONDENT, THREATENED CERTAIN OF THE RESPONDENT'S EMPLOYEES (1) THAT IF THEY DID NOT JOIN THE APPLICANT

UNION THEY WOULD LOSE THEIR JOBS, AND (2) THAT THEY WOULD FORCIBLY REMOVE EMPLOYEES OF THE RESPONDENT FROM HIS CAMP IF THEY DID NOT JOIN THE APPLICANT, AND (3) THAT THEY WOULD NOT LEAVE THE RESPONDENT'S CAMP UNTIL ALL THE RESPONDENT'S EMPLOYEES JOINED THE APPLICANT. A NUMBER OF THE MEMBERS OF THE APPLICANT WHO ACCOMPANIED THE SAID CHARLES CARON OR JEAN LEBLANC WERE UNDER THE INFLUENCE OF LIQUOR AND ACTING IN A ROWDY AND THREATENING MANNER.

2. THESE ALLEGATIONS ARE OF VERY SERIOUS CONTENT. APART FROM THE EVIDENCE WHICH I HAVE SPECIFICALLY DEALT WITH THERE IS NO EVIDENCE WHATSOEVER THAT THE APPLICANT UNION OR ANYONE INVOLVED IN THIS MATTER THREATENED EMPLOYEES THAT THEY WOULD LOSE THEIR JOBS IF THEY DID NOT JOIN THE APPLICANT UNION. AGAIN THERE IS NO EVIDENCE TO SUPPORT THE ALLEGATION THAT THE APPLICATION UNION OR ANYONE INVOLVED IN THE ORGANIZING CAMPAIGN WOULD FORCIBLY REMOVE EMPLOYEES FROM THE CAMP IF THEY DID NOT JOIN THE UNION. THERE IS ONE iota OF EVIDENCE THAT THE APPLICANT UNION OR ANYONE INVOLVED IN THE ORGANIZING CAMPAIGN THREATENED OR SAID TO ANYONE THAT THEY WOULD NOT LEAVE THE RESPONDENT'S CAMP UNTIL ALL THE EMPLOYEES JOINED THE APPLICANT. THERE IS NO EVIDENCE OF ROWDY AND THREATENING BEHAVIOUR ON THE PART OF ANYONE. THE ONLY ITEM IN THE ABOVE ALLEGATIONS THAT IS FIRMLY ESTABLISHED IS THAT TWO OF THE PEOPLE WHO CAME INTO THE CAMP WITH THE UNION OFFICIALS WERE UNDER THE INFLUENCE OF LIQUOR.

3. I CANNOT AGREE WITH THE MAJORITY REASONING THAT A GATHERING OF 25 TO 35 SUPPORTERS ESTABLISHES A SHOW OF FORCE THAT "WOULD OF NECESSITY TEND TO INTIMIDATE THE RESPONDENT'S EMPLOYEES AND WOULD BE SUFFICIENT TO DEPRIVE THEM OF THE EXERCISE OF THEIR FREE CHOICE TO JOIN THE APPLICANT UNION". TO GO ALONG WITH THIS REASONING THERE WOULD HAVE TO BE ACCOMPANYING EVIDENCE OF INTIMIDATION AS SUCH. IN THE ABSENCE OF SUPPORTING EVIDENCE OF INTIMIDATION I WOULD NOT LOOK SERIOUSLY ON SUCH A GATHERING OF SUPPORTERS. IN MY OPINION NUMBERS ALONE CANNOT BE CONSTRUED AS A "SHOW OF FORCE".

4. THERE IS PLENTY OF EVIDENCE THAT THE OFFICIALS OF THE UNION CARON AND LEBLANC WERE REASONABLE, UNDERSTANDING AND POLITE IN THEIR DEALINGS WITH THE EMPLOYEES. THIS APPLIES ON THE EVIDENCE TENDERED BY BOTH THE APPLICANT'S AND RESPONDENT'S WITNESSES.

5. WE HAVE EVIDENCE THAT THE APPLICANT'S OFFICIALS TOLD THE TWO DRUNKS TO GO HOME. THEY DID THIS BECAUSE THEY BELIEVED THAT THE PRESENCE OF THE DRUNKS WERE DETRIMENTAL TO THEIR CAUSE.

6. THROUGHOUT ALL OF THE EVIDENCE IN THIS CASE I COULD FIND ONLY ONE PIECE OF EVIDENCE THAT COULD TIE IN WITH THE ALLEGATIONS OF COERCION AND INTIMIDATION. THIS EVIDENCE CAME FROM ONE OF THE RESPONDENT'S WITNESSES TO THE EFFECT THAT THE TWO DRUNKS INVITED HIM TO "TAKE A WALK DOWN THE ROAD". EVIDENCE FROM OTHER WITNESSES IS TO THE EFFECT THAT WHILE THE DRUNKS WERE "WAVING THEIR HANDS AND SAYING HOW GOOD THE UNION WOULD BE" THERE WAS NO INTIMIDATION OR COERCION EVIDENT IN THEIR ACTIONS.

7. IN VIEW OF THE APPLICANT'S OFFICIALS EFFORTS TO GET RID OF THE DRUNKS I WOULD BE INCLINED TO DISTINGUISH BETWEEN THE ACTION OF A RANK AND FILE MEMBER AND

THAT OF RESPONSIBLE UNION OFFICIALS AS IN THE CANADIAN ELECTRICAL BOX AND STAMPING LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1964, P. 285.

8. IN MY OPINION THE RESPONDENT HAS FAILED TO ESTABLISH HIS SERIOUS CHARGES AGAINST THE APPLICANT AND I WOULD HAVE DISMISSED THE CHARGES AND CERTIFIED THE APPLICANT. IN ANY EVENT THERE IS NOTHING IN THE EVIDENCE BEFORE THE BOARD TO CAUSE IT TO DISMISS THE APPLICANT'S APPLICATION FOR CERTIFICATION. AT WORST, ONE MIGHT SAY THAT SOME DOUBT HAS BEEN CAST ON THE EVIDENCE OF MEMBERSHIP AND A VOTE OF ALL OF THE EMPLOYEES SHOULD BE ORDERED TO ASCERTAIN THE TRUE WISHES OF THE EMPLOYEES WITH RESPECT TO WHETHER OR NOT THEY WANTED THE APPLICANT TO REPRESENT THEM.

12089-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1190 (APPLICANT) V. GOLDLIST CONSTRUCTION LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: A. E. GOLDEN AND F. MASARO FOR THE APPLICANT AND W. PHELPS AND A. LANDAU FOR THE RESPONDENT.

DECISION OF THE BOARD: (OCTOBER 6, 1966).

IN THIS APPLICATION FOR CERTIFICATION, THE RESPONDENT CONTENDS IT IS NOT THE EMPLOYER OF THE EMPLOYEES AFFECTED BY THE APPLICATION. RATHER, THE RESPONDENT SAYS, THERE ARE TWO SEPARATE PROJECTS AND TWO SEPARATE EMPLOYERS, NAMELY, LAURELCREST INVESTMENTS AND MARTINWAY INVESTMENTS. THESE TWO CONCERNS ARE CORPORATE PARTNERSHIPS CONSTITUTED AS FOLLOWS:

(A) LAURELCREST INVESTMENTS (HEREINAFTER REFERRED TO AS "LAURELCREST") IS A PARTNERSHIP CONSISTING OF THE NAMED RESPONDENT, GOLDLIST CONSTRUCTION LIMITED (HEREINAFTER REFERRED TO AS "GOLDLIST"), RADEEN INVESTMENTS LIMITED AND TEDDINGTON LIMITED. IT WOULD APPEAR THAT RADEEN INVESTMENTS LIMITED IS OWNED AND CONTROLLED BY GOLDLIST. THIS IS NOT TRUE OF TEDDINGTON LIMITED WHICH IS NOT PART OF THE GOLDLIST GROUP OF ENTERPRISES. GOLDLIST HAS A 25% INTEREST IN THE PARTNERSHIP, RADEEN INVESTMENTS LIMITED A 10% INTEREST, AND TEDDINGTON LIMITED A 65% INTEREST.

(B) MARTINWAY INVESTMENTS (HEREINAFTER REFERRED TO AS "MARTINWAY") IS A PARTNERSHIP CONSISTING OF GOLDLIST AND MARKBOROUGH PROPERTIES LTD. (HEREINAFTER REFERRED TO AS "MARKBOROUGH"). LIKE TEDDINGTON, MARKBOROUGH IS NOT PART OF THE GOLDLIST GROUP OF ENTERPRISES. GOLDLIST HAS A 30% INTEREST IN THIS PARTNERSHIP AND MARKBOROUGH'S INTEREST IS 70%. IT SHOULD PERHAPS BE POINTED OUT THAT THE IMPRESSION LEFT AT THE HEARING THAT GOLDLIST IS THE PRESENT OWNER OF THE "WESTWAY", ONE OF THE PROPERTIES INVOLVED IN THIS APPLICATION, IS NOT CORRECT. EXHIBIT 12, A CERTIFIED COPY OF REGISTRAR'S ABSTRACT OF TITLE, INDICATES THAT MARKBOROUGH CONVEYED ONLY A THREE-TENTHS INTEREST IN THE SAID PROPERTY TO GOLDLIST. THIS WOULD BE CONSISTENT WITH THE RESPECTIVE INTERESTS OF THE PARTNERS SET OUT ABOVE.

COUNSEL FOR THE APPLICANT SUBMITS THAT GOLDLIST IS THE CONSTRUCTING ARM OF BOTH PARTNERSHIPS, THAT THE OTHER PARTNERS ARE CONCERNED WITH INVESTMENT ONLY, AND THAT THE BOARD SHOULD LOOK BEYOND THE PARTNERSHIPS AND DECLARE THAT GOLDLIST IS THE EMPLOYER OF THE EMPLOYEES EMPLOYED ON THE SEVERAL JOB SITES. IT IS CLEAR THAT THE EMPLOYEES ARE PAID BY CHEQUES HEADED "GOLDLIST PAYROLL ACCOUNT" AND THAT THE NAME OF THE ACCOUNT IS "GOLDLIST CONSTRUCTION LIMITED - GOLDLIST PAYROLL ACCOUNT". FURTHER, DEDUCTIONS FOR UNEMPLOYMENT INSURANCE, WORKMEN'S COMPENSATION, INCOME TAX, CANADA PENSION PLAN ETC. ARE PAID FROM THE SAME ACCOUNT AND, ON THE FORMS ACCOMPANYING SUCH PAYMENTS, GOLDLIST IS SHOWN AS THE EMPLOYER. HOWEVER, AS APPEARS FROM THE BOARD'S DECISION IN NATIONAL UNION OF PUBLIC EMPLOYEES V. MUNICIPALITY OF METROPOLITAN TORONTO, 61 C.L.L.C. ¶16,214, THE FACTOR OF PAYMENT IS NOT NECESSARILY DETERMINATIVE OF AN EMPLOYMENT RELATIONSHIP. IN THE PRESENT CASE IT IS CLEAR THAT THE MONIES PAID INTO THE GOLDLIST PAYROLL ACCOUNT TO SATISFY THE WAGE AND OTHER DEDUCTION CHEQUES DRAWN ON THE ACCOUNT COME FROM LAURELCREST AND MARTINWAY AND NOT FROM GOLDLIST EXCEPT IN SO FAR AS THAT COMPANY HAS AN INTEREST IN THE SAID PARTNERSHIPS.

IN MANY RESPECTS WHAT THE APPLICANT IS ARGUING IN THIS CASE IS SIMILAR TO THE POSITION TAKEN BY THE APPLICANT IN THE LOBLAW GROCETERIAS CO. LIMITED CASE, (1965) C.C.H. CANADIAN LABOUR LAW REPORTER, VOL. 1, ¶16,078. IN THE LATTER CASE THE APPLICANT WAS SEEKING TO PERSUADE THE BOARD TO "PIERCE THE CORPORATE VEIL". IN THE PRESENT CASE THE APPLICANT IS SEEKING TO "PIERCE THE PARTNERSHIP VEIL" IN THE SENSE OF FIXING THE EMPLOYER-EMPLOYEE RELATIONSHIP ON TO A SINGLE PARTNER. WHILE, PERHAPS, IN THIS SITUATION THERE IS NO HALLOWED LINE OF AUTHORITY STANDING IN THE WAY OF MAKING SUCH A FINDING AS THERE IS IN THE CASE OF THE "CORPORATE VEIL", NEVERTHELESS IT SEEMS TO US THAT MANY OF THE PRINCIPLES CONSIDERED AND APPLIED IN THE LOBLAW GROCETERIAS CASE ARE APPLICABLE TO THE INSTANT CASE.

AFTER COMPARING THE EVIDENCE IN THE TWO CASES RESPECTING CONTRACTS OF EMPLOYMENT, HIRING PRACTICES, DISCIPLINE, TRANSFERS, LAY-OFFS AND, IN GENERAL, DIRECTION AND CONDUCT OF THE WORK FORCES, IT IS ABUNDANTLY CLEAR THAT THE PRESENT APPLICANT IS IN A FAR LESS FAVOURABLE POSITION THAN WAS THE UNSUCCESSFUL APPLICANT IN THE LOBLAW GROCETERIAS CASE.

IN THE RESULT, AND AFTER HAVING CAREFULLY CONSIDERED ALL OF THE EVIDENCE AND THE ARGUMENTS OF COUNSEL, WE FIND THAT THE NAMED RESPONDENT IS NOT THE EMPLOYER OF THE EMPLOYEES AFFECTED BY THIS APPLICATION IN THE SENSE OF BEING THEIR SOLE EMPLOYER. ON THE CONTRARY, WE FIND THAT ON THE DATE OF THE MAKING OF THE APPLICATION THE EMPLOYEES WERE EMPLOYED BY EITHER LAURELCREST OR MARTINWAY, CORPORATE PARTNERSHIPS IN WHICH, OF COURSE, THE NAMED RESPONDENT IS AN ACTIVE PARTNER.

WHILE AMERICAN AUTHORITIES WERE TO A LARGE EXTENT DISTINGUISHED IN THE LOBLAW GROCETERIAS CASE, IT IS NOT WITHOUT INTEREST TO OBSERVE THAT THE NATIONAL LABOR RELATIONS BOARD HAS COME TO A SIMILAR CONCLUSION IN FACT SITUATIONS SOMEWHAT COMPARABLE TO THIS CASE. SEE W. W. HOLMES, (1949) 83 N.L.R.B. 49; WILLCOX CONSTRUCTION Co., (1949) 87 N.L.R.B. 371.

BEFORE LEAVING THIS ASPECT OF THE CASE WE WISH TO MAKE IT CLEAR THAT THE COMPLEXITIES OF MODERN BUSINESS ORGANIZATION, INCLUDING NEW AND EFFICIENT

ACCOUNTING PRACTICES AND PROCEDURES, DO NOT LESSEN THE NECESSITY OF THE CONTRACTUAL OR CONSENSUAL ELEMENT IN THE EMPLOYER-EMPLOYEE RELATIONSHIP AS DESCRIBED IN CONSIDERABLE DETAIL IN THE LOBLAW CASE. MORE SPECIFICALLY, A SIMPLE BOOK TRANSACTION BY EMPLOYER A WHEREBY AN EMPLOYEE IS TRANSFERRED TO THE WORK FORCE OF EMPLOYER B, OR A DIRECTION BY A FOREMAN OF EMPLOYER A TO AN EMPLOYEE TO REPORT FOR WORK ON THE PROJECT OF EMPLOYER B DO NOT BY THEMSELVES MAKE THE EMPLOYEE IN QUESTION AN EMPLOYEE OF EMPLOYER B FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. SOME OF THE EVIDENCE HEARD IN THIS CASE LEAVES US WITH THE DISTINCT IMPRESSION THAT, FOR EXAMPLE, IN THE CASE OF TRANSFERS, THE CONSENSUAL ELEMENT SO NECESSARY IN THE EMPLOYER-EMPLOYEE RELATIONSHIP IS OVERLOOKED OR FORGOTTEN IN THE DRIVE TO CENTRALIZE ACCOUNTING PROCEDURES.

THERE REMAINS FOR CONSIDERATION THE FUTURE COURSE OF THESE PROCEEDINGS. THIS IS A CASE IN WHICH, CLEARLY, A BONA FIDE MISTAKE WAS MADE WITH THE RESULT THAT A PROPER PARTY WAS NOT NAMED AS RESPONDENT. THE BOARD THEREFORE DIRECTS THAT THE NAME "GOLDLIST CONSTRUCTION LIMITED" BE STRUCK FROM THE STYLE OF CAUSE AND SUBSTITUTED BY THE NAMES "LAURELCREST INVESTMENTS" OR "MARTINWAY INVESTMENTS" AS THE CASE MAY BE.

THE BOARD FURTHER DIRECTS THE REGISTRAR TO SERVE LAURELCREST INVESTMENTS AND MARTINWAY INVESTMENTS WITH NOTICES OF THIS APPLICATION.

THE BOARD FURTHER DIRECTS THAT LAURELCREST INVESTMENTS AND MARTINWAY INVESTMENTS POST COPIES OF THIS DECISION IN PROMINENT LOCATIONS ON THE PROJECTS AFFECTED BY THE APPLICATION.

THE BOARD FURTHER DIRECTS THAT ANY REPLIES OF LAURELCREST INVESTMENTS AND MARTINWAY INVESTMENTS BE FILED WITH THE BOARD NOT LATER THAN FRIDAY, OCTOBER 14, 1966.

12153-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 183 (APPLICANT) v. WAYNE PUMP CANADA LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: RAY KOSKIE, M. REILLY, A. BEKERMANN AND J. STEFANINI FOR THE APPLICANT, AND JOHN P. SANDERSON AND C. K. AARON FOR THE RESPONDENT.

DECISION OF THE BOARD: (OCTOBER 7, 1966).

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. COUNSEL FOR THE RESPONDENT CONTENDS THAT THE CONSTITUTION OF THE APPLICANT PREVENTS IT FROM ADMITTING TO MEMBERSHIP CERTAIN OF THE EMPLOYEES IN THE BARGAINING UNIT. IF THIS CONTENTION WERE ESTABLISHED, THEN THE BOARD, FOR THE REASONS SET OUT IN THE GAYMER & OULTRAM CASE, (1954) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '49-'54, ¶17,073, WOULD DISMISS THE APPLICATION. THE APPLICANT, HOWEVER, DISPUTES THE RESPONDENT'S CONTENTION, AND LED EVIDENCE WITH RESPECT TO THE CONSTITUTION OF THE APPLICANT AND THE MANNER IN WHICH THE ELIGIBILITY PROVISIONS OF THE CONSTITUTION HAVE BEEN INTERPRETED BY RESPONSIBLE OFFICERS OF THE APPLICANT.

4. THE APPLICANT RELIES ON THE JURISDICTIONAL CLAIM SET OUT IN ITS MANUAL OF JURISDICTION WITH RESPECT TO "ALL WORK IN FACTORIES, MILLS AND INDUSTRIAL PLANTS PERFORMED NOW OR AS MAY BE ACQUIRED HEREAFTER - - -". THE PROVISION GOES ON TO ENUMERATE CERTAIN PARTICULAR CLASSIFICATIONS OF FACTORY WORK. WHILE IT MAY BE THAT THE CONSTITUTION AND MANUAL OF JURISDICTION DO NOT SPECIFICALLY DEAL WITH THE ELIGIBILITY FOR MEMBERSHIP OF ALL OF THE EMPLOYEES IN THE BARGAINING UNIT DEALT WITH IN THIS APPLICATION, IT IS ALSO THE CASE THAT THE CONSTITUTION DOES NOT IN TERMS PRECLUDE THE APPLICANT FROM REPRESENTING ANY OF THE EMPLOYEES IN THE BARGAINING UNIT.

5. IN INTERPRETING UNION CONSTITUTIONS FOR THE PURPOSE OF DETERMINING THE ELIGIBILITY FOR MEMBERSHIP OF PERSONS IN A PROPOSED BARGAINING UNIT, THE BOARD HAS FOLLOWED THE PRINCIPLE SET OUT IN THE JOHN E. RIDDELL AND SON LTD. CASE, 2 C.L.S. 76-564, 568:

IN CONSTRUING CONSTITUTIONS OF TRADE UNIONS, IT MUST BE THE UNDERSTANDING OF A LAYMAN RATHER THAN A TECHNICAL INTERPRETATION OF THE WORDS THAT MUST GOVERN. WHAT WE HAVE TO ARRIVE AT IN THIS CASE IS THE INTENTION OF THE RESPONSIBLE BODIES WITHIN THE INTERNATIONAL UNION AS TO THE MEANING OF THE MEMBERSHIP ARTICLE OF THE CONSTITUTION.

IT IS CLEAR FROM THE EVIDENCE IN THE INSTANT CASE THAT THE RESPONSIBLE OFFICIALS OF THE APPLICANT HAVE PLACED AN INTERPRETATION ON THE PROVISIONS OF ITS CONSTITUTION AND MANUAL OF JURISDICTION WHICH IS BROAD ENOUGH TO MAKE ALL OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ELIGIBLE FOR MEMBERSHIP. INDEED, THE EVIDENCE IS THAT ALL OF THE PERSONS IN THE BARGAINING UNIT HAVE IN FACT BEEN TREATED AS ELIGIBLE FOR MEMBERSHIP, AND THE EVIDENCE IS THAT NO PERSON WHO WOULD COME WITHIN AN INDUSTRIAL "ALL-EMPLOYEE" BARGAINING UNIT HAS EVER BEEN REFUSED MEMBERSHIP IN THE APPLICANT TRADE UNION. IT IS ALSO SIGNIFICANT THAT IN THE CANADIAN RADIATOR MFG. CO. LIMITED CASE, BOARD FILE NO. 8967-64-R, IN WHICH AN INDUSTRIAL OPERATION HAVING SOME SIMILARITY TO THAT OF THE RESPONDENT WAS INVOLVED, THE BOARD CERTIFIED THE APPLICANT WITH RESPECT TO A UNIT OF "ALL EMPLOYEES" OF THE RESPONDENT WITH THE USUAL EXCEPTIONS. ON THE EVIDENCE BEFORE US, WE ARE CONSTRAINED TO CONCLUDE THAT THE ARGUMENT RAISED BY COUNSEL FOR THE RESPONDENT MUST FAIL.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12155-66-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. NORRIS TRANSPORT LIMITED (RESPONDENT) v. CANADIAN TRANSPORTATION WORKERS' UNION No. 197, N.C.C.L. (INTERVENER).

- AND -

12156-66-R: CANADIAN TRANSPORTATION WORKERS' UNION No. 197, NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT) v. NORRIS TRANSPORT LIMITED (RESPONDENT) v. GENERAL TRUCK DRIVERS' UNION, LOCAL 879 (INTERVENER).

(THE ABOVE CASES ARE CONSOLIDATED).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFFE.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE:
(OCTOBER 26, 1966).

1. CONSOLIDATION OF THE APPLICATIONS FOR CERTIFICATION SET OUT IN THE STYLE OF CAUSE HEREOF WAS DIRECTED BY THE BOARD IN ITS DECISION OF SEPTEMBER 16, 1966.

2. THE BOARD FINDS THAT THE APPLICANTS ARE TRADE UNIONS WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT.

3. THE APPLICANTS EACH SOUGHT A BARGAINING UNIT COMPRISING ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF HAMILTON.

4. AT THE HEARING, THE QUESTION AROSE AS TO THE PROPRIETY OF INCLUDING IN THE BARGAINING UNIT SOUGHT FIVE EMPLOYEES OF THE RESPONDENT BASED ON TORONTO AND WHO KEEP CERTAIN EQUIPMENT OF THE RESPONDENT IN THEIR CHARGE THERE. THE BOARD, IN ITS DECISION OF SEPTEMBER 16TH ABOVE REFERRED TO, AUTHORIZED MR. F. D. EDWARDS, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD UPON THE LISTS OF EMPLOYEES, THE NATURE OF THE RELATIONSHIP BETWEEN THE RESPONDENT'S OPERATIONS IN HAMILTON AND TORONTO, AND THE INTERCHANGE OF EMPLOYEES BETWEEN THESE OPERATIONS.

5. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT, THE BOARD FINDS THAT IT WOULD BE INAPPROPRIATE TO INCLUDE THE TORONTO DRIVERS IN THE SAME BARGAINING UNIT WITH THE OTHER EMPLOYEES OF THE RESPONDENT, AND THAT THERE SHOULD THEREFORE BE TWO BARGAINING UNITS.

6. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING (HEREINAFTER REFERRED TO AS BARGAINING UNIT #1).

7. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING (HEREINAFTER REFERRED TO AS BARGAINING UNIT #2).

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #1, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT, CANADIAN TRANSPORTATION WORKERS' UNION, No. 197, NATIONAL COUNCIL OF CANADIAN LABOUR, AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A CERTIFICATE, WITH RESPECT TO BARGAINING UNIT #1, WILL ISSUE TO THE APPLICANT CANADIAN TRANSPORTATION WORKERS' UNION, No. 197, NATIONAL COUNCIL OF CANADIAN LABOUR.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT, GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

11. A CERTIFICATE, WITH RESPECT TO BARGAINING UNIT #2, WILL ISSUE TO THE APPLICANT, GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.

DECISION OF BOARD MEMBER F. W. MURRAY: (OCTOBER 26, 1966).

I DISSENT.

I WOULD HAVE FOUND ONE UNIT TO BE APPROPRIATE FOR COLLECTIVE BARGAINING IN THIS CASE.

THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT SHOWS THAT THERE IS NO OFFICE, DEPOT OR TERMINAL IN TORONTO, NOR IS THERE ANY SUPERVISION IN TORONTO. THE TORONTO EMPLOYEES, WHILE WORKING IN TORONTO, GET THEIR INSTRUCTIONS IN THE SAME MANNER AND FROM THE SAME SUPERVISORS AS DO THE HAMILTON EMPLOYEE WHILE WORKING IN TORONTO, NAMELY BY A DIRECT TELEPHONE LINE BETWEEN HAMILTON AND TORONTO.

THERE IS ONE PAYROLL AND CHEQUES ARE EITHER MAILED TO THE TORONTO DRIVERS TO THEIR HOMES OR PICKED UP BY THEM WHILE THEY ARE IN HAMILTON.

THE EXAMINER'S REPORT FURTHER POINTED OUT THAT THE FIVE TORONTO MEN HAVE TRACTORS WHICH, AT THE END OF THEIR DAY'S WORK, ARE LEFT ON THE PREMISES OF A MAJOR CUSTOMER AND AT TWO SERVICE STATIONS IN TORONTO, EXCEPT DURING THE WINTER MONTHS WHEN THE DRIVERS TAKE THEIR TRACTORS HOME, WHERE THEY HAVE PLUG-IN HEATERS.

DRIVERS IN BOTH HAMILTON AND TORONTO DO INDENTICALLY THE SAME WORK, NAMELY DRIVE BETWEEN AND WORK (I.E. PICK UP AND DELIVER FREIGHT) IN BOTH THE HAMILTON AND TORONTO AREAS AND AT INTERMEDIATE POINTS.

THE QUESTION OF ESTABLISHING ONE UNIT EMBRACING MORE THAN ONE COMMUNITY HAS BEEN DEALT WITH IN A PREVIOUS BOARD CASE (SEE KINGSLEA TRANSPORT, BOARD FILE NO. 10131-64-R) WHICH SEEMS TO BE ON ALL FOURS WITH THE CASE BEFORE US.

I WOULD HAVE FOUND, ON THE BASIS OF THE EVIDENCE BEFORE US, THAT ONE UNIT WAS PROPER FOR COLLECTIVE BARGAINING AND, AS A RESULT OF THE MEMBERSHIP POSITION OF BOTH OF THE UNITS IN THIS CONSOLIDATED APPLICATION, I WOULD HAVE DIRECTED A VOTE TO DETERMINE THE WISHES OF THE EMPLOYEES IN THE UNIT.

12164-66-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. A. K. PENNER & SONS LTD. (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN, AND BOARD MEMBERS R. W. TEAGLE AND D. W. FORGIE.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., AND W. SHERMAN FOR THE APPLICANT, WARREN K. WINKLER AND ROBERT WEILER FOR THE RESPONDENT.

DECISION OF THE BOARD: (OCTOBER 3, 1966).

1. ON SEPTEMBER 7, 1966, THE BOARD APPOINTED AN EXAMINER IN THIS MATTER TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. SUBSEQUENTLY, THE PARTIES REQUESTED THE BOARD TO DEFER THE EXAMINER'S INQUIRY PENDING REPRESENTATIONS TO THE BOARD ON THE QUESTION OF THE APPROPRIATE BARGAINING UNIT. A HEARING WAS HELD FOR THIS PURPOSE.

2. THE PROBLEMS IN THIS CASE REVOLVE AROUND (1) THE REQUEST BY THE APPLICANT FOR AN "ALL EMPLOYEE" UNIT INSTEAD OF ITS USUAL CRAFT UNIT AND (2) THE PROPOSAL BY THE APPLICANT THAT IT BE GRANTED AN AREA COMBINING SEVERAL ESTABLISHED BOARD AREAS. WITH RESPECT TO THE AREA PROBLEM IT HAS NOT BEEN THE PRACTICE OF THE BOARD TO COMBINE TWO OR MORE ESTABLISHED AREAS AND WE SEE NO REASON FOR DOING SO IN THE PRESENT CASE. ASSUMING, BUT WITHOUT DECIDING, THAT THE AGREEMENTS REFERRED TO BY THE APPLICANT WOULD CONSTITUTE A PATTERN, THE MERE FACT THAT ONE UNION HAS ESTABLISHED A PATTERN WHICH COMBINES TWO OR MORE BOARD AREAS DOES NOT WARRANT A CHANGE IN AREAS SET BY THE BOARD. IT MUST NOT BE FORGOTTEN THAT THE AREAS ESTABLISHED BY THE BOARD ARE MEANT TO APPLY TO UNIONS AND EMPLOYERS IN GENERAL AND NOT TO ONE PARTICULAR UNION. IF A NEW GENERAL PATTERN OF BARGAINING IS ESTABLISHED BY UNIONS AND EMPLOYERS THEN THAT IS A MATTER THE BOARD WOULD HAVE TO CONSIDER AT THE APPROPRIATE TIME.

3. THE PROBLEM OF "CRAFT" VERSUS "ALL EMPLOYEE" UNITS PRESENTS MORE DIFFICULTIES. IT IS CLEAR THAT IN THE PAST THE BOARD HAS GRANTED ALL EMPLOYEE UNITS IN CONSTRUCTION INDUSTRY CASES TO, INTER ALIA, THE PRESENT APPLICANT. SEE FOR EXAMPLE, SAVILLE CONSTRUCTION COMPANY LIMITED, O. L. R. B. MONTHLY REPORT, OCTOBER, 1964, P. 305 AND R. E. LEE CONSTRUCTION CO. LTD., O.L.R.B. MONTHLY REPORT, SEPTEMBER 1965, P. 395. IT IS ALSO TRUE THAT THE BOARD HAS

REFUSED TO GRANT SUCH A UNIT WHERE TRADES INTENDED TO BE EMPLOYED IN THE FUTURE WERE NOT EMPLOYED ON THE DATE OF THE MAKING OF THE APPLICATION. SEE MANNIX Co. Ltd., O. L. R. B. MONTHLY REPORT, JANUARY, 1965, P. 526. IN THE LATTER CASE, THE BOARD INDICATED THAT THE LIKELIHOOD OF WORK ASSIGNMENT OR JURISDICTIONAL DISPUTES AS A FACTOR WHICH OUGHT TO BE TAKEN INTO CONSIDERATION IN DETERMINING THE APPROPRIATE BARGAINING UNIT. THIS FACTOR, IN OUR VIEW, ASSUMES AN EVEN GREATER SIGNIFICANCE NOW THAT THE BOARD HAS BEEN GIVEN WIDE POWERS TO DEAL WITH WORK WHICH NORMALLY ORGNIZES ALONG CRAFT LINES SEEKS AN ALL EMPLOYEE BARGAINING UNIT ONE OF THE FACTORS TO BE CONSIDERED IS THE LIKELIHOOD OF THE GRANTING OF SUCH A UNIT LEADING TO A WORK ASSIGNMENT OR JURISDICTIONAL DISPUTE. WE SHOULD PERHAPS ADD AT THIS POINT THAT WE AGREE WITH THE APPLICANT'S SUBMISSION THAT SECTION 90(B) OF THE LABOUR RELATIONS ACT IS NOT SO WORDED AS TO PRECLUDE A TRADE UNION WHICH NORMALLY ORGANIZES ALONG CRAFT LINES FROM APPLYING FOR AN ALL EMPLOYEE UNIT IN A CONSTRUCTION INDUSTRY APPLICATION.

4. IN THE PRESENT CASE, THE JOB SITES AFFECTED BY THE APPLICATION ARE IN REMOTE LOCALITIES IN THE PATRICIA PORTION OF THE DISTRICT OF KENORA. ACCESS TO THESE SITES IS BY AEROPLANE OR, IN THE WINTER, BY TRACTOR TRAINS. COMMUNICATION IS RESTRICTED TO RADIO-TELEPHONE. THERE IS NO EVIDENCE TO SUGGEST THAT ANY OTHER TRADE UNIONS HAVE ATTEMPTED OT ORGANIZE THESE REMOTE AREAS. IN OUR VIEW, THE EVIDENCE BEFORE US WARRANTS A FINDING THAT THE GRANTING OF AN ALL EMPLOYEE UNIT WOULD NOT LIKELY LEAD TO ANY WORK ASSIGNMENT DISPUTES PROVIDING THE BARGAINING RIGHTS GRANTED ARE CONFINED TO THE MORE REMOTE LOCALITIES.

5. TWO FURTHER ARGUMENTS ADVANCED BY THE RESPONDENT REMAIN TO BE CONSIDERED. THE RESPONDENT SUBMITS THAT IF AN ALL EMPLOYEE UNIT IS GRANTED THE BOARD SHOULD INSIST THAT THE APPLICANT HAVE AS MEMBERS NOT ONLY AN OVERALL MAJORITY IN THAT UNIT BUT ALSO AMONG THE EMPLOYEES IN THE CRAFT WHICH IT NORMALLY REPRESENTS. THIS HAS NOT BEEN THE PRACTICE OF THE BOARD IN THE PAST AND WE SEE NO NEED TO INTRODUCE SUCH A CONSIDERATION AT THIS TIME PARTICULARLY IN VIEW OF OUR OTHER OBSERVATIONS CONCERNING THE GRANTING OF ALL EMPLOYEE UNITS.

THE OTHER SUBMISSION OF THE RESPONDENT HAD TO DO WITH PROOF OF MEMBERSHIP IN THE APPLICANT TRADE UNION. IT IS CLEAR FROM THE EVIDENCE SUBMITTED IN THIS CASE AS WELL AS IN EARLIER CASES THAT THE APPLICANT DOES ADMIT TO MEMBERSHIP AND HAS AS MEMBERS (WITHIN THE STANDARD OF MEMBERSHIP REQUIRED BY THE BOARD IN CERTIFICATION CASES) PERSONS OTHER THAN CARPENTERS OR CARPENTERS' APPRENTICES. IN OTHER WORDS, THERE IS AN ESTABLISHED PRACTICE IN THIS RESPECT WHICH IN OUR VIEW CONSTITUTES A COMPLETE ANSWER TO THE CONTENTIONS ADVANCED BY THE RESPONDENT ON THIS POINT.

6. HAVING REGARD TO ALL THE EVIDENCE AND TO THE ABOVE CONSIDERATIONS, THE BOARD MAKES THE FOLLOWING FINDINGS:

- (1) THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT,
- (2) THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT, AND
- (3) THAT ALL EMPLOYEES OF THE RESPONDENT IN THE PATRICIA PORTION OF THE DISTRICT OF KENORA, SAVE AND EXCEPT FOREMEN, PERSONS

ABOVE THE RANK OF FOREMAN AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE EXAMINER IS DIRECTED TO PROCEED WITH HIS INQUIRY WITH ALL DUE DISPATCH.

12165-66-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
(APPLICANT) v. T. ZELMER CONSTRUCTION CO. LTD. (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN AND BOARD MEMBERS R. W. TEAGLE AND D. W. FORGIE.

DECISION OF THE BOARD: (OCTOBER 4, 1966).

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

3. THE APPLICANT HAS FILED A DULY COMPLETED FORM 59, STATEMENT OF STATUS OF TRADE UNION, CONSTRUCTION INDUSTRY. THE APPLICANT ALSO FILED TWELVE COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THE COMBINATION APPLICATIONS FOR MEMBERSHIP ARE SIGNED BY THE EMPLOYEES AND THE RECEIPTS ARE COUNTERSIGNED AND INDICATE THAT A PAYMENT OF A LEAST \$1.00 HAS BEEN MADE WITHIN THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE MONEY WAS COLLECTED BY ONE PERSON. THE APPLICANT ALSO FILED A DULY COMPLETED FORM 60, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

4. ALTHOUGH THIS MATTER WOULD NORMALLY HAVE COME TO THE BOARD FOR DISPOSITION ON SEPTEMBER 7, 1966, THE DAY FOLLOWING THE TERMINAL DATE SET FOR THE APPLICATION, IT WAS HELD IN ABEYANCE UNTIL SEPTEMBER 22, 1966 IN ORDER TO GIVE EXTRA TIME TO THE RESPONDENT TO MAKE REPRESENTATIONS. ALTHOUGH THE RESPONDENT FILED A REPLY AND ADDITIONAL REPRESENTATIONS CONTAINED IN A LETTER, IT HAS NOT FILED A LIST OF EMPLOYEES OR SPECIMEN SIGNATURES, OTHER THAN A STATEMENT CONCERNING THE NUMBER OF CARPENTERS IN ITS EMPLOY.

5. THE BOARD NOTES THAT THE RESPONDENT DID NOT REQUEST A HEARING IN THIS CASE BUT CONSENTED TO THE DISPOSITION OF THE APPLICATION ON THE BASIS OF ITS WRITTEN REPRESENTATIONS TO THE BOARD.

6. THE SUBMISSIONS OF THE APPLICANT AND THE RESPONDENT WITH RESPECT TO THE DISPOSITION OF THE BARGAINING UNIT RAISE ESSENTIALLY THE SAME ISSUES AS THOSE CANVASSED BY THE BOARD IN THE A. K. PENNER & SONS LTD. DECISION DATED OCTOBER 3, 1966. (SEE BOARD FILE #12164-66-R). FOR THE REASONS GIVEN IN THAT DECISION, THE BOARD FINDS FURTHER THAT ALL EMPLOYEES OF THE RESPONDENT IN THE PATRICIA PORTION OF THE DISTRICT OF KENORA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE

RANK OF FOREMAN AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. IN ASCERTAINING THE MEMBERSHIP POSITION OF THE APPLICANT FOR THE PURPOSES OF SECTION 7 OF THE LABOUR RELATIONS ACT, THE BOARD LOOKS TO THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION. SEE SUBSECTION ONE OF SECTION 7. THE FACT THAT SUCH EMPLOYEES SUBSEQUENTLY LEAVE THE EMPLOY OF THE RESPONDENT OR THAT OTHER EMPLOYEES ARE HIRED AFTER THE DATE OF THE MAKING OF THE APPLICATION CANNOT AFFECT THE MEMBERSHIP POSITION OF AN APPLICANT. THE BOARD THEREFORE FINDS ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12181-66-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. WESTON BAKERIES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND D. W. FORGIE.

APPEARANCES AT THE HEARING: I. J. THOMSON FOR THE APPLICANT, G. G. SMITH AND F. B. OSBORNE FOR THE RESPONDENT.

DECISION OF THE BOARD: (OCTOBER 4, 1966).

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. THIS APPLICATION WAS MADE ON AUGUST 30TH, 1966.

3. THE RESPONDENT AND GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA WERE PARTIES TO A COLLECTIVE AGREEMENT WHICH WAS TO EXPIRE BY ITS TERMS ON SEPTEMBER 1ST, 1966. THE COLLECTIVE AGREEMENT CONTAINED THE FOLLOWING CLAUSE WITH RESPECT TO ITS EXPIRY OR RENEWAL:

17.02 . NOTICE THAT AMENDMENTS ARE REQUIRED, OR THAT EITHER PARTY INTENDS TO TERMINATE THE AGREEMENT, MAY ONLY BE GIVEN DURING A PERIOD OF NOT MORE THAN SIXTY (60) AND NOT LESS THAN THIRTY (30) DAYS PRIOR TO SEPTEMBER 1ST, 1966, OR ANY SUCCEEDING ANNIVERSARY DATE.

NO NOTICE WAS SERVED PURSUANT TO THE PROVISIONS OF SECTION 40(1) OF THE ACT OR ARTICLE 17.02 OF THE COLLECTIVE AGREEMENT.

4. THE RESPONDENT ARGUED THAT IN THE ABSENCE OF NOTICE TO BARGAIN FOR RENEWAL THE COLLECTIVE AGREEMENT AUTOMATICALLY RENEWED ITSELF AND THIS APPLICATION IS THEREFORE UNTIMELY AND SHOULD BE DISMISSED. THE RESPONDENT FURTHER ARGUED THAT THIS APPLICATION WAS AN ATTEMPT TO AVOID THE RESULTS WHICH WOULD FLOW FROM THE PROVISIONS OF THE COLLECTIVE AGREEMENT WHICH PROVIDE FOR AUTOMATIC RENEWAL IN THE EVENT THAT NOTICE PURSUANT TO THE PROVISIONS OF ARTICLE 17.02 IS NOT GIVEN. THE RESPONDENT ALSO TOOK THE POSITION THAT THE APPLICANT AND LOCAL 879 WERE ATTEMPTING TO EFFECT A TRANSFER OF JURISDICTION WITHIN THE MEANING OF SECTION 47 OF THE ACT BUT WERE TRYING TO CIRCUMVENT THE REQUIREMENTS OF THAT SECTION. IF WHAT IS TAKING PLACE IN THE INSTANT CASE IS IN EFFECT A TRANSFER OF JURISDICTION, THE RESPONDENT ARGUED THAT THE APPLICANT MUST ASSUME, PURSUANT TO THE PROVISIONS OF SECTION 47(3), THE SUBSISTING COLLECTIVE AGREEMENT WHICH BOUND LOCAL 879.

5. ASSUMING THAT THE RESPONDENT'S ARGUMENT IS CORRECT AND THAT IN DEFAULT OF NOTICE PURSUANT TO THE PROVISIONS OF ARTICLE 17.02 THE COLLECTIVE AGREEMENT WOULD RENEW ITSELF, THE RENEWAL WOULD NOT TAKE EFFECT UNTIL THE ANNIVERSARY DATE OF THE COLLECTIVE AGREEMENT WHICH WAS SEPTEMBER 1ST, 1966. THIS APPLICATION WAS MADE ON AUGUST 30TH, 1966 WHICH WAS DURING THE LAST TWO MONTHS OF THE OPERATION OF THE COLLECTIVE AGREEMENT.

6. EVEN THOUGH THE APPLICANT AND LOCAL 879 ARE BOTH CHARTERED LOCALS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, THE APPLICANT IS A SEPARATE ENTITY AND HAS ALWAYS BEEN TREATED AS SUCH BY THE BOARD FOR THE PURPOSES OF THE ACT.

7. THERE IS NOTHING IN THE ACT WHICH WOULD PREVENT THE BRINGING OF THIS APPLICATION BY THE APPLICANT AND THE BOARD FINDS THAT THIS APPLICATION WAS MADE PURSUANT TO THE PROVISIONS OF SECTION 5 OF THE LABOUR RELATIONS ACT.

8. THE BOARD ACCORDINGLY FINDS THAT THIS APPLICATION IS TIMELY.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

10. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS WOODSTOCK AND LONDON BRANCHES, SAVE AND EXCEPT ROUTE FOREMEN, PERSONS ABOVE THE RANK OF ROUTE FOREMAN, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK.

11. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

12. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.

13. THE MATTER IS REFERRED TO THE REGISTRAR.

12193-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. WOODBRIDGE MOULDED PRODUCTS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. W. FORGIE.

APPEARANCES AT THE HEARING: R. W. STEWART AND R. OULD FOR THE APPLICANT, B. W. BINNING AND W. HUBBARD FOR THE RESPONDENT, W. DITTMAR AND MRS. M. BENOIT FOR THE OBJECTORS.

DECISION OF THE BOARD: (OCTOBER 31, 1966).

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. AT THE HEARING OF THIS MATTER ON SEPTEMBER 27TH, 1966, THE REPRESENTATIVE OF A GROUP OF EMPLOYEES OPPOSING THE APPLICATION FOR CERTIFICATION ALLEGED THAT MARGARET BENOIT, AN EMPLOYEE OF THE RESPONDENT, DID NOT PAY A \$1.00 INITIATION FEE ON THE APPLICATION FOR MEMBERSHIP SUBMITTED BY THE APPLICANT ON HER BEHALF. SUBSEQUENT TO MAKING ITS OWN USUAL INQUIRY INTO THE ALLEGATION THE BOARD ADVISED THE PARTIES THAT IT WAS LISTING THE MATTER FOR HEARING FOR THE PURPOSE OF INQUIRING INTO THE CIRCUMSTANCES SURROUNDING THE ALLEGED PAYMENT OF AN INITIATION FEE BY MARGARET BENOIT.

4. BY LETTER DATED OCTOBER 12TH, 1966 COUNSEL FOR THE APPLICANT ADVISED THE BOARD THAT THE APPLICANT HAD MADE ITS OWN INQUIRY WITH REGARD TO THE ALLEGATION AND THAT IT APPEARED THAT MARGARET BENOIT HAD NOT PAID THE INITIATION FEE ON THE MEMBERSHIP CARD SUBMITTED BY THE APPLICANT ON HER BEHALF. IN LIGHT OF THESE CIRCUMSTANCES COUNSEL FOR THE APPLICANT REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION.

5. HAVING REGARD TO THE ADMISSION OF THE APPLICANT THE BOARD IS NOT PREPARED TO ACCEPT ANY OF THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT IN CONNECTION WITH THIS APPLICATION.

6. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

12208-66-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 804,
(AFL-CIO-CLC) (APPLICANT) v. MUIRHEAD INSTRUMENTS LIMITED (RESPONDENT) v.
GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND
H. F. IRWIN.

APPEARANCES AT THE HEARING: LORNE MORPHY, GEORGE PETTA AND BERNARD J. BARNES
FOR THE APPLICANT, W. M. TEMPLE, R. W. WATLER AND R. G. ROTH FOR THE
RESPONDENT, GLADYS TAYLOR, GUENTHER MASCHKE AND L. RAY WALLER FOR A GROUP OF
EMPLOYEES.

DECISION OF THE BOARD: (OCTOBER 6, 1966).

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN A GROUP OF EMPLOYEES
FILED A DOCUMENT IN OPPOSITION TO THE APPLICATION. AT THE FIRST HEARING IN
THIS MATTER THE RESPONDENT CHALLENGED THE INCLUSION OF ONE OF THE PERSONS WHO
REPRESENTED THE GROUP OF EMPLOYEES ON THE GROUNDS THAT SHE OUGHT TO BE EXCLUDED
FROM ANY BARGAINING UNIT DETERMINED BY THE BOARD TO BE APPROPRIATE BECAUSE SHE
EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE
LABOUR RELATIONS ACT. THE BOARD FOLLOWING ITS USUAL PRACTICE INDICATED THAT IT
WOULD ONLY IDENTIFY THE DOCUMENTS FILED IN OPPOSITION TO THE APPLICATION BUT
WOULD NOT COMPLETE ITS USUAL INQUIRY INTO THE ORIGINATION OF THE DOCUMENTS AND
THE MANNER IN WHICH THEY CAME TO BE SIGNED UNTIL THE STATUS OF THE PERSON WHO
PARTICIPATED IN THE ORIGINATION AND CIRCULATION OF THE DOCUMENT WAS DETERMINED.
THE BOARD INDICATED THAT AN EXAMINER WOULD BE APPOINTED FOR THIS PURPOSE AND AN
ADJOURNMENT WOULD BE REQUIRED.

2. THE APPLICANT REQUESTED LEAVE OF THE BOARD TO FILE CHARGES RELATING TO
THE PETITION AND ACKNOWLEDGED THAT THE APPLICANT HAD INFORMATION CONCERNING
THESE CHARGES APPROXIMATELY ONE WEEK PRIOR TO THE HEARING. NO REASON WAS GIVEN
CONCERNING THE DELAY IN FILING THE CHARGES. THE APPLICANT, HOWEVER, ARGUED THAT
SINCE THE MATTER WAS TO BE ADJOURNED AND A FURTHER HEARING WAS NECESSITATED TO
INQUIRE INTO THE PETITION FILED IN OPPOSITION TO THIS APPLICATION THROUGH NO
FAULT OF THE APPLICANT, NO ONE WOULD SUFFER PREJUDICE OR ADDITIONAL EXPENSE AND
NO FURTHER DELAY WOULD BE OCCASIONED IF THE APPLICANT WERE NOW TO BE PERMITTED
TO FILE CHARGES.

3. IN FLECK MANUFACTURING LIMITED CASE, CCH CANADIAN LABOUR LAW CASES,
VOL. 2, 1960-1964, ¶16.236, THE BOARD IN DEALING WITH THE NECESSITY TO FILE
CHARGES AND PARTICULARS EXPEDITIOUSLY STATED AS FOLLOWS:

THE OBJECT OF THIS REQUIREMENT, WHICH FINDS EXPRESSION IN
SECTION 48 OF THE RULES, IS OBVIOUSLY TO EXPEDITE AND
FACILITATE THE HEARING AND PROCESSING OF APPLICATIONS
UNDER THE ACT AND TO AVOID PREJUDICE, DELAY OR EMBARRASSMENT
TO THE PARTIES INVOLVED. DELAY AND LAST-MINUTE ALLEGATIONS,
WHICH LEAD TO ADJOURNMENTS OR CAUSE PREJUDICE, EMBARRASSMENT
OR UNNECESSARY EXPENSE TO THE OTHER PARTIES, AND WHICH WITH
REASONABLE DILIGENCE COULD HAVE BEEN MADE AT A MORE TIMELY
STAGE OF THE PROCEEDINGS WILL NOT BE ENTERTAINED EXCEPT FOR
GOOD AND SUFFICIENT CAUSE.

4. IT IS READILY APPARENT THAT THE REASONS AS SET OUT ABOVE FOR REFUSING TO PERMIT LATE FILING OF ALLEGATIONS OF IMPROPER CONDUCT ARE NOT APPLICABLE TO THE CIRCUMSTANCES IN THIS CASE. SINCE THE BOARD WAS FACED WITH THE NECESSITY OF AN ADJOURNMENT WHICH WAS NOT AT THE REQUEST OR THROUGH THE MANOEUVRING OF THE PARTY DESIRING TO MAKE CHARGES, THE BOARD CANNOT FIND ANY REAL REASON FOR REFUSING PERMISSION TO THE APPLICANT TO MAKE CHARGES AT THIS TIME.

5. ACCORDINGLY, THE BOARD DIRECTS THAT THE APPLICANT BE PERMITTED TO FILE IN WRITING ANY ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT TOGETHER WITH THE NECESSARY PARTICULARS AS REQUIRED BY THE BOARD'S RULES OF PROCEDURE FORTHWITH.

6. MR. S. G. GRIZZLE, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF HARRY HAYHOW, CATHERINE YOUNG AND PERSONS CLASSIFIED BY THE RESPONDENT AS RESEARCH AND DEVELOPMENT AND ENGINEERING PERSONNEL, TIME STUDY MEN, METHODS MEN AND LABORATORY TECHNICIANS.

12214-66-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. VICTORIA HOSPITAL BOARD OF TRUSTEES OF THE CITY OF LONDON (RESPONDENT) v. LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION, Local 220, BSEIU (INTERVENER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS D. ALAN PAGE AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: C. J. SCOTT FOR THE APPLICANT, A. R. THORFINNSEN, LEWIS W. CONWAY AND W. J. WHITTAKER, Q. C., FOR THE RESPONDENT, AND JOHN M. ASKIN FOR THE INTERVENER.

DECISION OF THE BOARD: (OCTOBER 5, 1966).

1. THE NAME "VICTORIA HOSPITAL" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "VICTORIA HOSPITAL BOARD OF TRUSTEES OF THE CITY OF LONDON".

2. THIS IS AN APPLICATION FOR CERTIFICATION. THE APPLICANT APPLIES, PURSUANT TO SECTION 6(2) OF THE LABOUR RELATIONS ACT, FOR A BARGAINING UNIT CONSISTING OF STATIONARY ENGINEERS AND THEIR HELPERS.

3. BY THE PROVISIONS OF SECTION 6(2) OF THE ACT, WHERE AN APPLICATION IS MADE WITH RESPECT TO A GROUP OF EMPLOYEES WHO EXERCISE TECHNICAL SKILLS OR ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM THE OTHER EMPLOYEES AND COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT, THE BOARD SHALL DEEM SUCH A GROUP OF EMPLOYEES TO CONSTITUTE A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING IF THE APPLICATION IS MADE BY A TRADE UNION PERTAINING TO SUCH SKILLS OR CRAFT. THE CONCLUDING WORDS OF SUBSECTION (2), HOWEVER, CONTAIN THE PROVISIO THAT THE BOARD SHALL NOT BE REQUIRED TO APPLY SUBSECTION (2) WHERE A GROUP OF EMPLOYEES IS INCLUDED IN A BARGAINING UNIT REPRESENTED BY ANOTHER BARGAINING AGENT AT THE TIME THE APPLICATION IS MADE.

4. THE EMPLOYEES AFFECTED BY THE INSTANT APPLICATION ARE IN FACT REPRESENTED BY THE INTERVENER AND WERE SO REPRESENTED AT THE TIME THIS APPLICATION WAS MADE. THESE EMPLOYEES ARE COVERED BY THE PROVISIONS OF A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER. THE INTERVENER HAS FOR MANY YEARS BEEN BARGAINING AGENT FOR A UNIT OF EMPLOYEES, INCLUDING THOSE AFFECTED BY THE PRESENT APPLICATION, AND THE INTERVENER AND THE RESPONDENT HAVE ENTERED INTO A NUMBER OF COLLECTIVE AGREEMENTS. THE INTERVENER HAS NEGOTIATED WITH RESPECT TO THE EMPLOYEES AFFECTED BY THE PRESENT APPLICATION, AND SUCH EMPLOYEES HAVE PARTICIPATED IN THE PREPARATION OF NEGOTIATING PROPOSALS. THERE IS NO EVIDENCE THAT THE INTERVENER HAS FAILED TO REPRESENT THE STATIONARY ENGINEERS EFFECTIVELY; INDEED, THE EVIDENCE IS TO THE CONTRARY.

5. HAVING IN MIND THE HISTORY OF COLLECTIVE BARGAINING BETWEEN THE RESPONDENT AND THE INTERVENER, THE BOARD IS OF THE OPINION THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE IN THIS CASE.

6. THE APPLICATION IS ACCORDINGLY DISMISSED.

12222-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. DARLING AND COMPANY OF CANADA LIMITED (RESPONDENT) v. EMPLOYEES' ORGANIZATION, DARLING & Co. OF CANADA LTD. (INTERVENER).

- AND -

12231-66-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. DARLING AND COMPANY OF CANADA LIMITED (RESPONDENT) v. EMPLOYEES' ORGANIZATION, DARLING & Co. OF CANADA LTD. (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. W. FORGIE.

APPEARANCES AT THE HEARING: DONALD C. MACDONALD FOR THE INTERNATIONAL CHEMICAL WORKERS UNION, C.J. SCOTT FOR CANADIAN UNION OF OPERATING ENGINEERS, W.M. GORDON, Q.C., AND L.H. BATHURST FOR THE COMPANY, C.E. PERKINS, G.E. FLETCHER AND D. WESTMAN FOR THE EMPLOYEES' ORGANIZATION.

DECISION OF THE BOARD: (OCTOBER 13, 1966).

1. AT THE HEARING OF THESE MATTERS THE BOARD DIRECTED THAT THE ABOVE APPLICATIONS BE HEARD TOGETHER.

2. THE BOARD FINDS THAT INTERNATIONAL CHEMICAL WORKERS UNION (HEREINAFTER REFERRED TO AS THE CHEMICAL WORKERS) IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. THE BOARD ALSO FINDS THAT CANADIAN UNION OF OPERATING ENGINEERS (HEREINAFTER REFERRED TO AS THE CANADIAN UNION) IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. ON SEPTEMBER 9TH, 1966, THE CHEMICAL WORKERS APPLIED TO BE CERTIFIED FOR ALL EMPLOYEES OF THE COMPANY IN ITS CHATHAM, ONTARIO PLANT AND GALT AND LONDON STATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF AND STATIONARY ENGINEERS. ON THE SAME DAY THE CANADIAN UNION

APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL STATIONARY ENGINEERS IN THE EMPLOY OF THE COMPANY IN ITS BOILER ROOM AT CHATHAM, SAVE AND EXCEPT CHIEF ENGINEER.

4. ALL EMPLOYEES WITH WHOM WE ARE HERE CONCERNED HAVE BEEN REPRESENTED BY THE EMPLOYEES' ORGANIZATION SINCE 1948. ON NOVEMBER 30TH, 1961 IN AN APPLICATION BY THE CANADIAN UNION WITH RESPECT TO THE UNIT NOW SOUGHT BY IT, THE BOARD EXERCISED ITS DISCRETION UNDER SECTION 6(2) OF THE LABOUR RELATIONS ACT AND DISMISSED THE APPLICATION (SEE BOARD FILE 2073-61-R).

5. THE PARTIES AGREED THAT IMMEDIATELY PRIOR TO THESE APPLICATIONS ALL THE FACTS WITH RESPECT TO STATIONARY ENGINEERS (ENGINEER-COOKER OPERATORS, AS THEY ARE CLASSIFIED BY THE COMPANY) ARE THE SAME AS THEY WERE AT THE TIME OF THE BOARD'S DECISION REFERRED TO ABOVE.

6. IF THE ONLY MATTER BEFORE THE BOARD WAS THE APPLICATION BY THE CANADIAN UNION, IT WOULD NECESSARILY FOLLOW THAT THE DECISION OF THE BOARD OF NOVEMBER 30TH, 1961 WOULD HAVE TO BE FOLLOWED AND THE CANADIAN UNION'S CURRENT APPLICATION WOULD ACCORDINGLY BE DISMISSED SINCE IT IS AGREED THAT THE FACTS ARE THE SAME AS THEY WERE IN 1961.

7. THE MAIN FACTOR WHICH THE BOARD TOOK INTO CONSIDERATION IN ITS DECISION OF NOVEMBER 30TH, 1961 ABOVE REFERRED TO WAS THE LONG HISTORY OF COLLECTIVE BARGAINING BETWEEN THE COMPANY AND THE EMPLOYEES' ORGANIZATION COVERING THE STATIONARY ENGINEERS WHICH WAS EVIDENCED BY THE OTHER FACTORS WHICH THE BOARD CONSIDERED.

8. HOWEVER, THE APPLICATION OF THE CHEMICAL WORKERS CURRENTLY BEFORE THE BOARD, IF SUCCESSFUL, WOULD CAUSE THE SITUATION WITH RESPECT TO THE STATIONARY ENGINEERS TO BE SUBSTANTIALLY ALTERED IN THAT THERE WOULD BE NO EXTENSIVE BARGAINING HISTORY BETWEEN THE CHEMICAL WORKERS AND THE COMPANY COVERING STATIONARY ENGINEERS. IT FOLLOWS THAT IF THE CHEMICAL WORKERS SUCCEEDS IN DISPLACING THE EMPLOYEES' ORGANIZATION AS BARGAINING AGENT FOR THE STATIONARY ENGINEERS THEN THERE WOULD NOT BE A HISTORY OF REPRESENTATION BY THE CHEMICAL WORKERS WHICH THE BOARD COULD TAKE INTO CONSIDERATION AT THIS TIME.

9. THE BOARD THEREFORE DETERMINES THAT THERE SHOULD BE A REPRESENTATION VOTE BETWEEN THE CHEMICAL WORKERS AND THE EMPLOYEES' ORGANIZATION OF ALL THE EMPLOYEES REPRESENTED BY THE EMPLOYEES' ORGANIZATION. IF THE CHEMICAL WORKERS ARE SUCCESSFUL IN DISPLACING THE EMPLOYEES' ORGANIZATION AS A RESULT OF THAT REPRESENTATION VOTE THEN A FURTHER REPRESENTATION VOTE IS TO BE HELD TO PERMIT THE STATIONARY ENGINEERS EMPLOYED BY THE COMPANY TO DECIDE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE CHEMICAL WORKERS OR THE CANADIAN UNION.

10. THE BOARD IS SATISFIED THAT ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE COMPANY IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE CHEMICAL WORKERS AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

11. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE COMPANY IN THE FOLLOWING VOTING CONSTITUENCY:

ALL EMPLOYEES OF THE COMPANY AT ITS CHATHAM, ONTARIO PLANT AND GALT AND LONDON STATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF. (HEREINAFTER REFERRED TO AS VOTING CONSTITUENCY #1)

12. ALL EMPLOYEES OF THE COMPANY IN VOTING CONSTITUENCY #1 ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

13. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE INTERNATIONAL CHEMICAL WORKERS UNION AND THE EMPLOYEES' ORGANIZATION, DARLING & Co. OF CANADA LTD. IN VOTING CONSTITUENCY #1.

14. THE BOARD IS FURTHER SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE COMPANY IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE CANADIAN UNION AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

15. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE COMPANY IN THE FOLLOWING VOTING CONSTITUENCY:

ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE BOILER ROOM OF THE COMPANY AT CHATHAM, SAVE AND EXCEPT THE CHIEF ENGINEER. (HEREINAFTER REFERRED TO AS VOTING CONSTITUENCY #2)

16. ALL EMPLOYEES OF THE COMPANY IN VOTING CONSTITUENCY #2 ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

17. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE CANADIAN UNION OF OPERATING ENGINEERS AND THE INTERNATIONAL CHEMICAL WORKERS UNION IN VOTING CONSTITUENCY #2.

18. THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING THE BALLOTS CAST IN THE REPRESENTATION VOTE IN VOTING CONSTITUENCY #2 SHALL BE SEALED AND THE BALLOTS SHALL NOT BE COUNTED UNLESS IT IS DETERMINED FOLLOWING THE COUNTING OF THE BALLOTS CAST IN THE REPRESENTATION VOTE IN VOTING CONSTITUENCY #1 THAT THE INTERNATIONAL CHEMICAL WORKERS UNION HAVE OBTAINED IN EXCESS OF FIFTY PER CENT OF THE VOTES CAST BY ALL THOSE ELIGIBLE TO VOTE IN VOTING CONSTITUENCY #1.

19. IN ARRIVING AT THIS DECISION THE BOARD HAS TAKEN INTO ACCOUNT THE CONCLUDING WORDS OF SECTION 6(1) OF THE ACT TO ASCERTAIN THE WISHES OF THE EMPLOYEES OF THE COMPANY AS TO THE APPROPRIATENESS OF THE BARGAINING UNIT IN THIS MATTER.

20. THE MATTER IS REFERRED TO THE REGISTRAR.

12227-66-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. T. A. COLLINS TRANSPORT LTD. (RESPONDENT).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: I. J. THOMSON FOR THE APPLICANT, R. COLLINS FOR THE RESPONDENT.

DECISION OF J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBER F. W. MURRAY: (OCTOBER 17, 1966).

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. WITH A SINGLE EXCEPTION, IT HAS BEEN THE INVARIABLE PRACTICE OF THE BOARD IN DETERMINING THE APPROPRIATENESS OF BARGAINING UNITS TO USE THE DESIGNATION OF PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK TO DIFFERENTIATE PART-TIME FROM FULL-TIME EMPLOYEES. THE SINGLE EXCEPTION HAS BEEN IN APPLICATIONS FOR CERTIFICATION OF EMPLOYEES OF BRINK'S EXPRESS COMPANY OF CANADA, LIMITED, WHERE, BECAUSE OF THE HISTORY OF BARGAINING IN THAT COMPANY, THE BOARD, SOLELY ON THE AGREEMENT OF THE PARTIES, HAS EXCLUDED FROM THE BARGAINING UNIT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 15 HOURS PER WEEK (SEE BRINK'S EXPRESS COMPANY OF CANADA LIMITED CASE BOARD FILE No. 12228-66-R). HAVING REGARD BOTH TO THE REPRESENTATIONS OF THE APPLICANT AND THE LONG STANDING POLICY OF THE BOARD, WE SEE NO REASON TO ACCEDE TO THE REQUEST OF THE APPLICANT THAT THE 24 HOUR DESIGNATION SEPARATING THE PART-TIME FROM THE FULL-TIME EMPLOYEES BE REDUCED TO 15 HOURS IN THE INSTANT CASE.

3. THE BOARD ACCORDINGLY FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: (OCTOBER 17, 1966).

I DISSENT FROM THE MAJORITY DECISION WITH RESPECT TO THE EXCLUSION FROM THE BARGAINING UNIT OF EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS

PER WEEK. AT THE HEARING IN THIS MATTER THE PARTIES AGREED TO THE EXCLUSION OF PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 15 HOURS PER WEEK. HAVING REGARD TO THE AGREEMENT OF THE PARTIES AND THE RECENT BOARD DECISION IN THE BRINK'S EXPRESS COMPANY OF CANADA LIMITED CASE (SUPRA) WHERE THE BOARD EXCLUDED PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 15 HOURS PER WEEK, I WOULD NOT HAVE INSISTED THAT THE 24 HOUR OR LESS EXCLUSION BE APPLIED.

12233-66-R: THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: J. P. LOUGHRAN AND T. GRIMSHAW FOR THE APPLICANT, F. G. HAMILTON AND T. WEAVER FOR THE RESPONDENT.

DECISION OF THE BOARD: (OCTOBER 4, 1966).

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES COMPOSED OF ALL DRAFTING CLERKS IN THE EMPLOY OF THE RESPONDENT AT ITS GUELPH WORKS.
3. THE APPLICANT WAS CERTIFIED BY THE BOARD ON JUNE 24TH, 1954 AS BARGAINING AGENT FOR A CRAFT UNIT CONSISTING OF ALL DRAFTSMEN AND APPRENTICE DRAFTSMEN IN THE EMPLOY OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT SUPERVISORS. MOREOVER, THE APPLICANT AND THE RESPONDENT ARE BOUND BY A CURRENT COLLECTIVE AGREEMENT COVERING THESE EMPLOYEES. THE APPLICANT SUBMITS THAT THE DRAFTING CLERKS FOR WHOM IT IS SEEKING CERTIFICATION IN THE INSTANT APPLICATION CONSTITUTE AN APPROPRIATE TAG-END UNIT TO THE DRAFTSMEN AND THEIR APPRENTICES.
4. THERE IS NO EVIDENCE THAT THE DRAFTING CLERKS COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES NOR IS THERE A HISTORY OF THE APPLICANT ACTING AS A BARGAINING AGENT FOR SUCH A GROUP OF EMPLOYEES. FURTHER, THE EVIDENCE DOES NOT SUPPORT A FINDING THAT THE DRAFTING CLERKS ARE DISTINGUISHABLE FROM OTHER EMPLOYEES SO AS TO CONSTITUTE A CRAFT UNIT WITHIN THE MEANING OF SECTION 6(2) OF THE ACT. IN THESE CIRCUMSTANCES, THERE IS NO BASIS UPON WHICH TO MAKE A FINDING THAT THESE EMPLOYEES CONSTITUTE AN APPROPRIATE TAG-END TO THE EXISTING CRAFT UNIT. IT MAY BE THAT THE DRAFTING CLERKS WOULD FORM PART OF AN APPROPRIATE UNIT IN AN ORIGINAL APPLICATION FOR CERTIFICATION FOR THE DRAFTSMEN IN THE EMPLOY OF THE RESPONDENT. IN VIEW OF THE PREVIOUS CERTIFICATION AND THE CURRENT COLLECTIVE AGREEMENT COVERING THE DRAFTSMEN AND THEIR APPRENTICES, HOWEVER, IT IS NOT NECESSARY FOR THE BOARD TO MAKE SUCH A DETERMINATION (SEE ST. MARYS GENERAL HOSPITAL (FITCHENER) CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1963, P. 496).
5. WITH THE EXCEPTION OF THE DRAFTSMEN AND THEIR APPRENTICES AND THE PLANT EMPLOYEES OF THE RESPONDENT, NO BARGAINING RIGHTS ARE IN EXISTENCE COVERING THE

REMAINING EMPLOYEES. IT ACCORDINGLY WOULD APPEAR THAT THESE LATTER EMPLOYEES INCLUDING THE DRAFTING CLERKS WOULD CONSTITUTE AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING. HOWEVER, EVEN IF THE DRAFTING CLERKS FORMED PART OF A SMALLER UNIT THAT WAS APPROPRIATE FOR COLLECTIVE BARGAINING, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY POSSIBLE APPROPRIATE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

6. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

12249-66-R: THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L. - C.I.O., C.L.C. (APPLICANT) V. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. W. FORGIE.

APPEARANCES AT THE HEARING: J. P. LOUGHRAN AND F. C. BROOKSON FOR THE APPLICANT, E. W. GREENSLADE FOR THE RESPONDENT.

DECISION OF THE BOARD: (OCTOBER 6, 1966).

1. THE NAME "CANADIAN GENERAL ELECTRIC Co. LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "CANADIAN GENERAL ELECTRIC COMPANY LIMITED".

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. THE APPLICANT IS APPLYING FOR A BARGAINING UNIT COMPOSED OF ALL DRAFTSMEN, APPRENTICE DRAFTSMEN AND DRAFTING CLERKS IN THE EMPLOY OF THE RESPONDENT. IN THE PAST THE BOARD HAS RECOGNIZED DRAFTSMEN AND THEIR APPRENTICES AS BEING AN APPROPRIATE CRAFT UNIT. THERE IS NO HISTORY, HOWEVER, OF DRAFTING CLERKS BEING INCLUDED IN THE CRAFT OR OF THE APPLICANT BARGAINING ON THEIR BEHALF. SINCE THE EVIDENCE BEFORE THE BOARD RELATING TO DRAFTING CLERKS FAILS TO MEET ANY OF THE REQUIREMENTS OF SECTION 6(2) OF THE ACT, THE BOARD IS NOT PREPARED AT THIS TIME TO INCLUDE THEM WITHIN THE DESCRIPTION OF THE CRAFT.

4. THE BOARD ACCORDINGLY FINDS THAT ALL DRAFTSMEN AND APPRENTICE DRAFTSMEN IN THE EMPLOY OF THE RESPONDENT AT ITS SCARBOROUGH PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12293-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION No. 721 (APPLICANT) v. GILBERT STEEL LTD., BRITANNIA ROAD EAST, MALTON, ONTARIO (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

DECISION OF THE BOARD: (OCTOBER 13, 1966).

1. THE APPLICANT FILED THREE COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THE COMBINATION APPLICATIONS FOR MEMBERSHIP ARE SIGNED BY THE EMPLOYEES AND THE RECEIPTS ARE COUNTERSIGNED AND INDICATE THAT A PAYMENT OF AT LEAST \$1.00 HAS BEEN MADE WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE MONEY WAS COLLECTED BY ONE PERSON. THE APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.
2. THE RESPONDENT FAILED TO FILE A REPLY, A LIST OF EMPLOYEES AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT.
4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.
5. THE JOB SITE AFFECTED BY THIS APPLICATION IS IN BRACEBRIDGE IN THE DISTRICT OF MUSKOKA. THE APPLICANT HAS APPLIED FOR AN AREA CONSISTING OF THE DISTRICTS OF MUSKOKA AND HALIBURTON AND THE COUNTIES OF VICTORIA AND ONTARIO. VICTORIA FORMS PART OF BOARD AREA #11 AND A PORTION OF THE COUNTY OF ONTARIO FORMS PART OF BOARD AREA #9. THE AREA PROPOSED IS THUS NOT AN APPROPRIATE GEOGRAPHICAL AREA. AT THE PRESENT TIME, THE BOARD HAS NOT INCLUDED THE DISTRICTS OF MUSKOKA AND HALIBURTON IN ANY APPROPRIATE GEOGRAPHIC AREA AND IT IS NOT PREPARED TO SET A NEW GEOGRAPHIC AREA IN THIS CASE. THEREFORE, AS A PURELY INTERIM MEASURE, THE BOARD FINDS THAT ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF MUSKOKA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12295-66-R: WOOD WIRE & METAL LATHERS' INTERNATIONAL UNION, LOCAL 360 (APPLICANT) v. LONDON ACOUSTICS LIMITED (RESPONDENT) v. WESTERN ONTARIO CARPENTERS, MILLWRIGHTS, AND MILLMEN DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND ITS AFFILIATED LOCAL UNIONS (INTERVENER).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN, AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

APPEARANCES AT THE HEARING: H. K. WELLER AND R. C. MERCER FOR THE APPLICANT; W. D. TAMBLYN FOR THE RESPONDENT; AND T. G. HARKNESS AND C. T. ANDISON FOR THE INTERVENER.

DECISION OF THE BOARD: (OCTOBER 26, 1966).

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1) (J) OF THE LABOUR RELATIONS ACT.
2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.
3. THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA INTERVENED IN THESE PROCEEDINGS BUT AT THE HEARING LEAVE WAS SOUGHT AND GRANTED TO AMEND THE NAME OF THE INTERVENER TO: "WESTERN ONTARIO CARPENTERS, MILLWRIGHTS, AND MILLMEN DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND ITS AFFILIATED UNIONS".
4. THE APPLICANT, WOOD WIRE & METAL LATHERS' INTERNATIONAL UNION, LOCAL 360, HEREINAFTER REFERRED TO AS "LOCAL 360", HAS APPLIED TO THE BOARD TO BE CERTIFIED AS BARGAINING AGENT FOR:

ALL LATHERS AND LATHER APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN THE COUNTIES OF ELGIN, MIDDLESEX, OXFORD, PERTH, HURON AND BRUCE SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

ON THE DATE OF THE MAKING OF THE APPLICATION THE RESPONDENT, HEREINAFTER REFERRED TO AS "THE COMPANY", EMPLOYED BOTH LATHERS AND CARPENTERS IN CONNECTION WITH THE INSTALLATION OF ACOUSTIC CEILINGS IN STEVENSON HALL AT THE UNIVERSITY OF WESTERN ONTARIO. THE INSTALLATION INVOLVES A FOUR-STAGE OPERATION WHICH MAY BE DESCRIBED BRIEFLY AS THE INSTALLATION OF (1) METAL HANGERS, (2) 1 1/2" CARRYING CHANNEL, (3) "U" BARS AND (4) ACOUSTICAL TILE. THE COMPANY HAS ASSIGNED THE FIRST TWO OPERATIONS TO THE LATHERS AND THE LAST TWO TO THE CARPENTERS.

5. THE COMPANY AND THE INTERVENER, HEREINAFTER REFERRED TO AS THE "WESTERN ONTARIO DISTRICT COUNCIL", ENTERED INTO A COLLECTIVE AGREEMENT ON JUNE 30, 1966 WHICH BY ARTICLE THREE PROVIDES:

WORK JURISDICTION AND SETTLEMENT
OF DISPUTES

(A) THE PARTY OF THE FIRST PART AGREES TO RECOGNIZE THE JURISDICTIONAL CLAIMS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA.

(B) IF A JURISDICTIONAL DISPUTE ARISES ON ANY JOB BETWEEN THE PARTY OF THE SECOND PART AND ANY OTHER BUILDING TRADES UNION THAT IS AFFILIATED WITH THE A.F.L.-C.I.O. BUILDING AND CONSTRUCTION TRADES DEPARTMENT; SAME SHALL BE SETTLED BY SUBMITTING THE DISPUTE IMMEDIATELY TO THE NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES FOR A DECISION. AND THE DECISION RENDERED BY THE NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES SHALL BE RECOGNIZED AND IMMEDIATELY IMPLEMENTED BY THE CONTRACTOR AND HIS SUB-CONTRACTORS; FAILURE ON THE PART OF THE CONTRACTOR AND HIS SUB-CONTRACTORS TO IMPLEMENT ANY DECISION FROM THE NATIONAL JOINT BOARD SHALL CONSTITUTE A GRIEVANCE.

(C) BOTH PARTIES AGREE TO RECOGNIZE AND ABIDE BY ALL AGREEMENTS COVERING WORK JURISDICTION AS MADE AND ENTERED INTO BY AND BETWEEN THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND ANY OTHER UNION.

BOTH THE COMPANY AND THE WESTERN ONTARIO DISTRICT COUNCIL AGREE THAT THE PRESENT WORK ASSIGNMENT IS IN ACCORD WITH THE JURISDICTIONAL CLAIMS OF THE LATTER. MORE PARTICULARLY, THE SAID PARTIES AGREE THAT THE NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES HAS MADE A NATIONAL DECISION IN THE MATTER OF "CEILING SYSTEMS" AS BETWEEN THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION AND THAT THE PRESENT WORK ASSIGNMENT IS IN ACCORD WITH THE SAID NATIONAL DECISION, WHICH WAS TO BECOME EFFECTIVE ON ALL WORK ASSIGNMENTS MADE ON CONSTRUCTION CONTRACTS LET AFTER OCTOBER 1, 1966. HOWEVER, ON A MOTION BY WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION, THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA ISSUED A PRELIMINARY INJUNCTION DATED SEPTEMBER 29, 1966 WHICH ORDERED THAT THE EFFECTIVE DATE OF THE SAID NATIONAL DECISION BE POSTPONED UNTIL A FINAL DECISION BY THAT COURT OR UNTIL FURTHER ORDER. THERE IS THUS SOME QUESTION AS TO WHETHER THERE HAS BEEN A DECISION RENDERED BY THE NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES WITHIN THE MEANING OF CLAUSE (B) OF ARTICLE THREE OF THE AGREEMENT (QUOTED ABOVE) BETWEEN THE COMPANY AND THE WESTERN ONTARIO DISTRICT COUNCIL AND CONSEQUENTLY SOME DOUBT AS TO THE PERSONS COVERED BY THE TERMS OF THE SAID COLLECTIVE AGREEMENT.

6. IT IS CLEAR THAT THE WOOD WIRE & METAL LATHERS INTERNATIONAL UNION AND, OF COURSE, LOCAL 360, CLAIM AS PART OF THEIR JURISDICTION THE RIGHT TO INSTALL THE "U" BARS, THAT IS, THE THIRD STAGE OF THE OPERATION DESCRIBED ABOVE. IT IS ALSO CLEAR THAT THE STANDARD AGREEMENT WHICH THE COMPANY WOULD BE ASKED TO SIGN BY THE APPLICANT, LOCAL 360, IF CERTIFIED, CONTAINS A TRADE JURISDICTION CLAUSE WHICH WOULD REQUIRE THE COMPANY TO ASSIGN THE INSTALLATION OF "U" BARS TO LATHERS. NOT UNNATURALLY, BOTH THE COMPANY AND THE WESTERN ONTARIO DISTRICT COUNCIL ARE FEARFUL THAT A DECISION OF THE BOARD CERTIFYING THE LATHERS MAY LEAD

TO A JURISDICTIONAL DISPUTE WITH ALL THE ATTENDANT STRIFE AND DISRUPTION OF OPERATIONS WHICH SO OFTEN ACCOMPANIES THESE DISPUTES. ON THE OTHER HAND, THERE IS AT THE PRESENT TIME NO ACTUAL DISPUTE ON THE JOB BECAUSE THE WORK ASSIGNMENTS OF THE COMPANY ARE BEING HONOURED BY THE PARTIES. FURTHER, HAVING REGARD TO THE COURSE OF THE PROCEEDINGS IN THE UNITED STATES DISTRICT COURT REFERRED TO ABOVE, IT DOES NOT SEEM POSSIBLE TO DETERMINE EXACTLY WHAT WORK OR PERSONS ARE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE COMPANY AND THE WESTERN ONTARIO DISTRICT COUNCIL.

7. ON THE EVIDENCE BEFORE US IT IS CLEAR THAT THE COMPANY HAS LATHERS IN ITS EMPLOY, THAT THEY ARE MEMBERS OF LOCAL 360 AND THAT IN THE NORMAL COURSE OF EVENTS LOCAL 360 WOULD BE ENTITLED TO BE CERTIFIED AS THEIR BARGAINING AGENT. THE QUESTION THAT ARISES IS HOW TO DESCRIBE THE APPROPRIATE BARGAINING UNIT. IN OUR VIEW, THE BOARD IS NOT ENTITLED IN A CERTIFICATION PROCEEDING TO ISSUE A DIRECTION WITH RESPECT TO WORK ASSIGNMENTS. AT BEST, IN THIS CASE, WE CAN ONLY EXEMPT FROM THE BARGAINING UNIT PERSONS COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE COMPANY AND THE WESTERN ONTARIO DISTRICT COUNCIL. AS POINTED OUT ABOVE, IT MAY NOT BE POSSIBLE TO DETERMINE JUST WHAT THAT AGREEMENT COVERS UNTIL A DECISION HAS BEEN REACHED IN A UNITED STATES COURT. IF THE DECISION OF THE NATIONAL JOINT BOARD ULTIMATELY PREVAILS, THEN THE RIGHTS OF THE PARTIES WOULD BE CLARIFIED BECAUSE THE CERTIFICATE ISSUED BY THIS BOARD WOULD EXEMPT EMPLOYEES COVERED BY THE SAID COLLECTIVE AGREEMENT. THIS, HOWEVER, MAY TAKE SOME TIME AND THE COMPANY AND THE WESTERN ONTARIO DISTRICT COUNCIL ASSERT THAT, IN THE INTERIM, BARGAINING CLAIMS MADE BY LOCAL 360 MAY CAUSE DIFFICULTIES ON THE JOB. IN THIS REGARD WE CAN ONLY DIRECT THE ATTENTION OF THE PARTIES TO SECTION 66 OF THE LABOUR RELATIONS ACT. LOCAL 360 IS NOT A PARTY TO ANY COLLECTIVE AGREEMENT WITH THE COMPANY IN THIS CASE AND IT WOULD THEREFORE APPEAR TO BE OPEN TO THE PARTIES TO INVOKE SUCH REMEDIES UNDER SECTION 66 AS THEY MAY SEE FIT AND AS THE CIRCUMSTANCES DICTATE.

8. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, THE BOARD FINDS FURTHER THAT ALL LATHERS AND LATHERS' APPRENTICES IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12331-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL # 1450 (APPLICANT) v. ARNOLD STEELE, GENERAL CONTRACTOR (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: A. LALONDE FOR THE APPLICANT; A. STEELE FOR THE RESPONDENT; AND J. McKIEVER FOR THE OBJECTORS.

DECISION OF THE BOARD: (October 31, 1966).

1. THE NAME "ARNOLD STEEL CONSTRUCTION GEN. CONTR., 837 ERSKINE STREET, PETERBOROUGH, ONTARIO" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "ARNOLD STEELE, GENERAL CONTRACTOR".
2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
3. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.
4. HAVING REGARD TO THE EVIDENCE BEFORE US, INCLUDING THE RATES OF PAY AND THE GENERAL DUTIES OF THE EMPLOYEES AFFECTED BY THIS APPLICATION, WE ARE SATISFIED THAT THESE EMPLOYEES ARE EMPLOYED PRIMARILY AS CARPENTERS ALTHOUGH THEY ALSO WORK AS LABOURERS AND AS REINFORCING RODMEN.
5. THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
6. THE OBJECTORS IN THIS CASE FILED A DOCUMENT (HEREINAFTER REFERRED TO AS "THE PETITION") OPPOSING THE APPLICATION. THE EVIDENCE RESPECTING THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITION STANDING BY ITSELF WOULD PROBABLY HAVE BEEN SUFFICIENT TO JUSTIFY A FINDING THAT THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT WAS PUT IN DOUBT SO AS TO REQUIRE A REPRESENTATION VOTE IN ORDER TO ASCERTAIN THE WISHES OF THE EMPLOYEES. HOWEVER, THE ACTION OF THE EMPLOYER IN GRANTING A WAGE INCREASE OF SIXTY CENTS AN HOUR FOLLOWING THE FILING OF THIS APPLICATION, NOT ONLY CASTS DOUBT IN TURN ON THE PETITION BUT ALSO IN OUR VIEW RENDERS IT MOST UNLIKELY THAT THE TRUE WISHES OF THE EMPLOYEES WOULD BE DISCLOSED BY A REPRESENTATION VOTE. SECTION 7(5) OF THE LABOUR RELATIONS ACT PROVIDES THAT IN SUCH CIRCUMSTANCES THE BOARD MAY CERTIFY A TRADE UNION AS BARGAINING AGENT WITHOUT TAKING A REPRESENTATION VOTE.
7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
8. HAVING REGARD TO THE ABOVE CONSIDERATIONS, A CERTIFICATE WILL ISSUE TO THE APPLICANT.

INDEXED ENDORSEMENT - TERMINATION

11733-66-R: DAN K. HOECKE (APPLICANT) V. GLAZIERS AND GLASSWORKERS LOCAL UNION 1819 OF THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA (RESPONDENT) V. CANADIAN STRUCTURAL GLASS LIMITED (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: (OCTOBER 18, 1966).

1. FOLLOWING THE COUNTING OF THE UNSEGREGATED BALLOTS CAST AT THE REPRESENTATION VOTE HELD IN THIS MATTER, A POST HEARING VOTE COUNT REPORT WAS ISSUED ON OCTOBER 4TH, 1966. THE LAST DATE FOR THE FILING OF OBJECTIONS TO THE REPORT WAS OCTOBER 14TH, 1966. UNDER THE BOARD'S RULES OF PROCEDURE, A PARTY, OR ANY EMPLOYEE OR REPRESENTATIVE OF A GROUP OF EMPLOYEES MAY MAKE REPRESENTATIONS AS TO ANY MATTER RELATING TO THE REPRESENTATION VOTE, OR AS TO THE ACCURACY OF THE REPORT, OR AS TO THE CONCLUSIONS THE BOARD SHOULD REACH IN VIEW OF THE REPORT.

2. BY LETTER DATED OCTOBER 12TH, 1966, THE RESPONDENT TRADE UNION REQUESTED THE BOARD TO CONSIDER A PETITION SIGNED BY PERSONS PURPORTING TO BE EMPLOYEES OF THE EMPLOYER, AND REQUESTING THAT THE REPRESENTATION VOTE BE RESCINDED. THERE IS NOTHING IN THESE DOCUMENTS IN THE NATURE OF OBJECTIONS OR REPRESENTATIONS CONCERNING THE REPRESENTATION VOTE HELD IN THIS MATTER.

3. IT WOULD BE QUITE IMPROPER FOR THE BOARD TO CONSIDER A PETITION OF THIS NATURE IN THESE CIRCUMSTANCES. THE BOARD HAS PURSUANT TO SECTION 43(3) OF THE LABOUR RELATIONS ACT CONDUCTED A REPRESENTATION VOTE IN WHICH THE EMPLOYEES CONCERNED WERE AFFORDED AN OPPORTUNITY FOR THE FREE EXPRESSION OF THEIR WISHES BY SECRET BALLOT. SECTION 43(4) OF THE ACT PROVIDES AS FOLLOWS:-

IF ON THE TAKING OF THE REPRESENTATION VOTE MORE THAN 50 PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE ARE CAST IN OPPOSITION TO THE TRADE UNION, THE BOARD SHALL DECLARE THAT THE TRADE UNION THAT WAS CERTIFIED OR THAT WAS OR IS A PARTY TO THE COLLECTIVE AGREEMENT, AS THE CASE MAY BE, NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.

THERE BEING NO OBJECTIONS TO THE CONDUCT OF THE VOTE OR THE COUNTING OF THE BALLOTS, THE BOARD IS BOUND BY THE DIRECTION CONTAINED IN THE STATUTE.

4. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN OPPOSITION TO THE RESPONDENT.

5. THE BOARD DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF THE INTERVENER FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT.

INDEXED ENDORSEMENTS - SECTION 65

11557-65-U: LEONARD R. BOIVIN, MEMBER LOCAL 800, SUDBURY (COMPLAINANT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 67, AND NORMAN BEANLAND BUSINESS MANAGER OF LOCAL 67 (RESPONDENTS).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: ROY JAMES, LEONARD R. BOIVIN AND STEPHEN LEACHIE FOR THE COMPLAINANT, AND NORMAN K. BEANLAND FOR THE RESPONDENTS.

DECISION OF THE BOARD: (OCTOBER 13, 1966).

1. THIS IS A COMPLAINT PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT, BEING THE PERSON AGGRIEVED, COMPLAINS THAT HE HAS BEEN DEALT WITH BY THE RESPONDENTS CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. IN ITS ESSENCE, THE COMPLAINT IS THAT THE RESPONDENTS PROCURED THE DISCHARGE OF THE COMPLAINANT FROM HIS EMPLOYMENT IN VIOLATION OF A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE EMPLOYER AND THE RESPONDENT TRADE UNION.

2. THE FACTS ARE NOT IN DISPUTE. THE COMPLAINANT WAS A MEMBER IN GOOD STANDING OF LOCAL 800, SUDBURY, OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA. HE OBTAINED A "TRAVEL PERMIT" FROM LOCAL 800 AND MOVED TO HAMILTON, WHERE HE FILED THE TRAVEL PERMIT WITH THE RESPONDENT LOCAL 67 OF THE UNITED ASSOCIATION. THIS TRAVEL PERMIT WAS PROPERLY FILED PURSUANT TO THE CONSTITUTION OF THE UNITED ASSOCIATION, AND UNDER THAT CONSTITUTION THE COMPLAINANT WAS ENTITLED TO THE PRIVILEGES OF MEMBERSHIP IN LOCAL 67, SAVE ONLY THAT HE WAS NOT ENTITLED TO VOTE AT THE MEETINGS OF THE LOCAL UNION. AFTER THE EXPIRY OF ONE YEAR, HE WOULD HAVE BEEN ENTITLED TO TRANSFER HIS MEMBERSHIP FROM LOCAL 800 TO LOCAL 67. AT THE MATERIAL TIMES, HOWEVER, THE COMPLAINANT HAD THE STATUS OF A NON-VOTING MEMBER OF THE RESPONDENT TRADE UNION.

3. THE COMPLAINANT OBTAINED EMPLOYMENT IN HAMILTON WITH A MEMBER OF THE MECHANICAL CONTRACTORS ASSOCIATION OF HAMILTON. THE EMPLOYER WAS, AS A MEMBER OF THAT EMPLOYERS' ORGANIZATION, BOUND BY A COLLECTIVE AGREEMENT WITH THE RESPONDENT TRADE UNION. THE COMPLAINANT CAME WITHIN THE BARGAINING UNIT SET OUT IN THIS AGREEMENT. THE COLLECTIVE AGREEMENT PROVIDES BY ARTICLE 3 AS FOLLOWS:-

ARTICLE 3 - PREFERENCE TO LOCAL UNION 67

EMPLOYERS SHALL GIVE PREFERENCE IN EMPLOYMENT TO MEMBERS OF LOCAL UNION 67. IN THE EVENT LOCAL UNION 67 IS UNABLE TO SUPPLY THE UNION MEN, THE PARTY OF THE FIRST PART SHALL BE AT LIBERTY TO HIRE OTHER MEN WHO SHALL BE WILLING AND ELIGIBLE TO BECOME MEMBERS OF LOCAL UNION 67 WITHIN THIRTY (30) DAYS. MEMBERS OF LOCAL UNION 67 AGREE TO WORK ONLY FOR RECOGNIZED SHOPS AND TO GIVE PREFERENCE TO SUCH SHOPS AS A

PARTY TO THIS AGREEMENT. JOURNEYMEN WORKING ON PLUMBING OR STEAMFITTING SHALL BE REQUIRED TO CARRY THE APPROPRIATE LICENSES. EMPLOYERS AGREE TO GIVE FULL CO-OPERATION IN HAVING PROPER ENFORCEMENT OF LICENSE LAWS AND IN HAVING INDUSTRIAL WORK COVERED FOR A FULL MEASURE OF SAFETY. NON-MEMBERS OF LOCAL UNION 67 SHALL BE FIRST LAID-OFF WHEN STAFF IS BEING REDUCED FOR ANY REASON.

IF NON-MEMBERS OF LOCAL UNION 67 ARE WORKING AND LOCAL UNION 67 MEMBERS ARE UNEMPLOYED, NON-MEMBERS OF LOCAL UNION 67 WILL BE REPLACED BY MEMBERS OF LOCAL UNION 67, WHO ARE IN GOOD STANDING. THE NON-MEMBERS OF LOCAL UNION 67 MAY BE REPLACED AFTER HE HAS WORKED ONE WEEK AND THE COMPANY HAS RECEIVED ONE DAY'S NOTICE THAT THE NON-MEMBERS IS TO BE REPLACED.

WHILE THE COMPLAINANT WAS IN THE EMPLOY OF THE EMPLOYER, THE RESPONDENT TRADE UNION TOOK THE POSITION THAT HE WAS NOT A MEMBER OF THE RESPONDENT UNION AND, RELYING ON THE ABOVE-QUOTED PROVISION, REQUESTED THE EMPLOYER TO DISCHARGE THE COMPLAINANT. THE EMPLOYER COMPLIED WITH THIS REQUEST. THE RESPONDENT TRADE UNION ACTED THROUGH ITS BUSINESS AGENT, THE RESPONDENT NORMAN BEANLAND, ALTHOUGH IT SHOULD BE RECORDED THAT MR. BEANLAND'S ADVICE TO THE OFFICERS OF THE RESPONDENT TRADE UNION WAS TO THE EFFECT THAT ITS INTERPRETATION OF THE COLLECTIVE AGREEMENT WAS WRONG AND THAT THE ACTION TAKEN CONSTITUTED A VIOLATION OF THE COLLECTIVE AGREEMENT AND OF THE UNION'S CONSTITUTION. THERE IS NO DISPUTE WITH RESPECT TO ANY OF THE FOREGOING, AND BOTH PARTIES HAVE URGED THE BOARD TO DEAL WITH THE COMPLAINT ON ITS MERITS. IT SHOULD BE MADE CLEAR THAT IN SETTING OUT THESE AGREED FACTS, THE BOARD HAS REFERRED TO THE CONSTITUTION OF THE UNION ONLY INsofar AS IT HAS BEEN NECESSARY TO DO SO IN THE COURSE OF DETERMINING THE FACTS WITH RESPECT TO THE COMPLAINANT'S STATUS UNDER THE COLLECTIVE AGREEMENT. FURTHER, THE BOARD IN NO WAY DEALS WITH THE PROPRIETY OR OTHERWISE OF THE COLLECTIVE AGREEMENT. THE COMPLAINANT HAS ALLEGED THAT THE RESPONDENTS PROCURED HIS DISCHARGE CONTRARY TO THE AGREEMENT, AND THE BOARD HAS CONSIDERED THE MATTERS RELEVANT TO THAT ISSUE.

4. IN THE NATIONAL SHOWCASE Co. LTD. CASE, 61 C.L.L.C., 901, A COMPLAINT WHICH WAS MADE UNDER SECTION 57 (NOW SECTION 65) OF THE ACT, MIGHT PROPERLY HAVE BEEN THE SUBJECT OF A GRIEVANCE PURSUANT TO THE PROVISIONS OF A COLLECTIVE AGREEMENT BETWEEN THE PARTIES. THE BOARD THERE STATED:-

IT SEEMS TO US, THEREFORE, IN DETERMINING WHETHER WE SHOULD EXERCISE OUR DISCRETION UNDER SECTION 57, SUBSECTION 4, IT IS PROPER TO TAKE INTO ACCOUNT THE FACT THAT AN ALTERNATE REMEDY EXISTS. IN ADDITION, WHEN THIS REMEDY IS ONE WHICH THE PARTIES THEMSELVES HAVE AGREED TO AND, FURTHER, INVOLVES A PROCEDURE UNDER WHICH THE PARTIES AGREE TO ATTEMPT TO SETTLE THE DISPUTE THEMSELVES BEFORE BRINGING IN AN OUTSIDER, THAT IS, AN ARBITRATOR, WE HAVE NO HESITATION IN SAYING THAT WE OUGHT NOT TO PROCEED FURTHER UNDER SECTION 57, SUBSECTION 4.

WHILE IN THE SPECIAL CIRCUMSTANCES OF A PARTICULAR CASE WE MIGHT WELL BE PERSUADED TO TAKE THE CONTRARY VIEW, IN ALL THE

CIRCUMSTANCES OF THIS CASE WE CAN FIND NO REASON TO DEPART FROM THE GENERAL PRINCIPLE ENUNCIATED ABOVE.

5. IN THE PITT STREET HOTEL LTD. CASE, 63 C.L.L.C., 1149, A COMPLAINT PURSUANT TO SECTION 65 OF THE ACT, THE COMPLAINANT ALLEGED THAT HE HAD BEEN DISCHARGED BY HIS EMPLOYER BECAUSE OF UNION ACTIVITY. THE EMPLOYER WAS PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION, AND THE COMPLAINANT HAD INVOKED THE GRIEVANCE PROCEDURE. A MEETING WAS HELD BETWEEN THE EMPLOYER AND THE TRADE UNION, AND FOLLOWING THE MEETING THE UNION DECIDED NOT TO PROCEED TO ARBITRATION OF THE GRIEVANCE. THE COMPLAINANT THEN MADE THE COMPLAINT TO THE BOARD PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE DECISION OF THE BOARD READ IN PART AS FOLLOWS:-

WHEN AN ALTERNATIVE REMEDY EXISTS UNDER A COLLECTIVE AGREEMENT, WHICH IS AVAILABLE TO THE COMPLAINANT, THE BOARD IS OF THE OPINION THAT IT SHOULD NOT INQUIRE INTO AN ALLEGED COMPLAINT ARISING OUT OF A VIOLATION OF SOME PROVISION OF THE ACT. NOTWITHSTANDING THIS, HOWEVER, THERE ARE EXCEPTIONAL CIRCUMSTANCES IN WHICH THE BOARD, IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 65, SUBSECTION 4, WILL INQUIRE INTO A COMPLAINT. ONE OF THESE CIRCUMSTANCES IS WHEN THERE IS AN ALLEGATION OF COLLUSION.

IN THE RESULT, THE BOARD DID NOT MAKE ANY FINDING THAT THERE WAS COLLUSION BETWEEN THE EMPLOYER AND THE OFFICIALS OF THE TRADE UNION, AND THE COMPLAINT WAS DISMISSED.

6. IN THE WALLACE BARNES COMPANY LTD. CASE, 61 C.L.L.C., 928, AN APPLICATION MADE TO THE BOARD PURSUANT TO SECTION 68(2) (NOW SECTION 79(2)) OF THE ACT FOR DECLARATION THAT THE APPLICANT WAS AN EMPLOYEE OF THE RESPONDENT COMPANY. THE APPLICANT, WHO HAD BEEN DISCHARGED BY THE RESPONDENT, ALLEGED THAT SHE HAD BEEN WRONGFULLY DISCHARGED IN VIOLATION OF THE COLLECTIVE AGREEMENT, AND THAT HAVING THEREFORE BEEN DISMISSED, AS SHE ALLEGED, CONTRARY TO THE LABOUR RELATIONS ACT, SHE REMAINED (BY VIRTUE OF SECTION 2(1)) AN EMPLOYEE FOR THE PURPOSES OF THE ACT. THE APPLICATION TO THE BOARD WAS MADE AFTER THE APPLICANT HAD INVOKED THE GRIEVANCE PROCEDURE UNDER THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT EMPLOYER AND A TRADE UNION, AND AFTER THE TRADE UNION HAD DETERMINED NOT TO PROCEED WITH HER GRIEVANCE. THE BOARD'S DECISION IN THE CASE WAS BASED ON ITS INTERPRETATION OF THE PROVISIONS OF SECTION 68(2) OF THE ACT. THE BOARD CONCLUDED, AND WE WOULD WITH RESPECT AGREE, THAT THE APPLICANT HAD NO REMEDY UNDER THAT SECTION OF THE ACT. NOTHING IN THE INSTANT CASE SHOULD BE READ AS DEROGATING FROM THAT DECISION. IN THE INSTANT CASE, THERE IS NO QUESTION OF THE STATUS OF THE AGGRIEVED PERSON TO MAKE THIS COMPLAINT.

7. IN THE WALLACE BARNES CASE, THE BOARD MADE IT CLEAR THAT, IN AN APPLICATION UNDER SECTION 68(2), IT WAS NOT CALLED UPON TO JUDGE THE INTERNAL AFFAIRS OF A TRADE UNION. NOTING THE ROLE OF A TRADE UNION AS BARGAINING AGENT FOR THE EMPLOYEES FOR THE PURPOSE OF NEGOTIATING A COLLECTIVE AGREEMENT, THE BOARD WENT ON TO SAY:-

THE TRADE UNION IS ALSO THEIR BARGAINING AGENT WITH RESPECT TO THE ADMINISTRATION OF THE COLLECTIVE AGREEMENT AND WHEN DISPUTES

ARISE INVOLVING THE INTERPRETATION OR ALLEGED VIOLATION OF THE AGREEMENT, THESE ARE MATTERS FOR THE PARTIES TO THAT AGREEMENT, THAT IS, THE TRADE UNION AND THE EMPLOYER.

IT SHOULD BE APPARENT THAT THE INSTANT CASE IN NO WAY DETRACTS FROM THIS REASONING, WHICH WOULD APPLY EQUALLY TO PROCEEDINGS BROUGHT PURSUANT TO SECTION 65 OF THE ACT. THE COLLUSIVE OR OTHERWISE WRONGFUL PROCURING OF AN EMPLOYEE'S DISCHARGE BY THE TRADE UNION ITSELF (AS IN THE INSTANT CASE) IS OBVIOUSLY NOT AN "INTERNAL AFFAIR" TO BE PROTECTED BY THE BOARD'S GENERAL POLICY, AS THE CASES REFERRED TO ABOVE HAVE ESTABLISHED.

8. IN THE INSTANT CASE, THERE IS A COLLECTIVE AGREEMENT IN EFFECT, AND IT WOULD APPEAR THAT AN ALTERNATE REMEDY EXISTS UNDER THE GRIEVANCE AND ARBITRATION PROVISIONS OF THAT AGREEMENT. IT IS NOT ALLEGED THAT THERE HAS BEEN COLLUSION BETWEEN THE EMPLOYER, WHO IS NOT A PARTY TO THIS PROCEEDING, AND THE TRADE UNION. THE ALLEGATION IS RATHER THAT THE UNION ITSELF WRONGFULLY PROCURED THE DISCHARGE OF THE COMPLAINANT. WHERE THE TRADE UNION HAS ITSELF PROCURED THE DISCHARGE OF AN EMPLOYEE, IT WOULD BE UNREASONABLE (TO SAY THE LEAST) TO EXPECT IT THEN TO CARRY THAT CASE THROUGH THE ARBITRATION PROCESS ON THE EMPLOYEE'S BEHALF. FURTHER, IN THESE CIRCUMSTANCES, IT WOULD BE UNFAIR TO REGARD THE EMPLOYER AS ALONE LIABLE TO THE EMPLOYEE FOR HIS WRONGFUL DISCHARGE. IN ANY EVENT, IT WAS CONCEDED BY THE REPRESENTATIVE OF THE RESPONDENTS THAT THE COMPLAINANT HAD NO EFFECTIVE RECOURSE, APART FROM THAT NOW SOUGHT, FOR THE WRONG DONE HIM. IT IS CLEAR THAT THE CIRCUMSTANCES OF THIS CASE COME WITHIN THE CLASSES OF "EXCEPTIONAL CIRCUMSTANCES" TO WHICH THE BOARD REFERRED IN THE PITT STREET HOTEL LTD. CASE, AND WHICH WERE CONTEMPLATED IN THE NATIONAL SHOWCASE CO. LTD. CASE, AND ALSO PERHAPS IN THE HEIST INDUSTRIAL SERVICES CASE, I.N.F.A. THE INSTANT CASE FOLLOWS THE POLICY EXPRESSED BY THE BOARD IN ITS PREVIOUS DECISIONS.

9. SECTION 65(4) OF THE LABOUR RELATIONS ACT PROVIDES FOR THE GRANTING OF RELIEF BY THE BOARD WHERE "IT IS SATISFIED THAT THE PERSON CONCERNED HAS BEEN REFUSED EMPLOYMENT, DISCHARGED, DISCRIMINATED AGAINST, THREATENED, COERCED, INTIMIDATED OR OTHERWISE DEALT WITH CONTRARY TO THIS ACT AS TO HIS EMPLOYMENT, OPPORTUNITY FOR EMPLOYMENT OR CONDITIONS OF EMPLOYMENT BY AN EMPLOYER OR OTHER PERSON OR A TRADE UNION". AS THE BOARD POINTED OUT IN THE NATIONAL SEA PRODUCTS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1961, P. 62, SECTION 65 IS A PROCEDURAL AND REMEDIAL SECTION. IT DOES NOT IN ITSELF ESTABLISH A SUBSTANTIVE RIGHT, THE BOARD'S JURISDICTION TO GRANT RELIEF BEING LIMITED TO CASES IN WHICH THE AGGRIEVED PERSON HAS BEEN DEALT WITH CONTRARY TO SOME SPECIFIC PROVISION OF THE LABOUR RELATIONS ACT. IT MAY BE OBSERVED THAT SECTION 65 DOES NOT REQUIRE, AS A CONDITION OF RELIEF, THAT THE CONDUCT COMPLAINED OF CONSTITUTE AN "OFFENCE" WHICH MIGHT BE THE SUBJECT OF PROSECUTION. AS THE MARGINAL HEADING OF THE SECTION INDICATES, SECTION 65 PROVIDES A "REMEDY FOR DISCRIMINATION", AND RELIEF MAY BE GRANTED, TO USE THE VERY WORDS OF THE SECTION, TO PERSONS WHO HAVE BEEN "DEALT WITH CONTRARY TO THIS ACT", AND IS NOT RESTRICTED TO THOSE WHO HAVE BEEN DEALT WITH CONTRARY TO THE PROVISIONS OF THE ACT WHICH CREATE OFFENCES.

10. THE EVIDENCE WHICH HAS BEEN DESCRIBED ABOVE, AND WHICH IS NOT IN DISPUTE, ESTABLISHES THAT THE RESPONDENT TRADE UNION, THROUGH ITS BUSINESS AGENT, THE RESPONDENT NORMAN BEANLAND, PROCURED THE DISMISSAL OF THE COMPLAINANT CONTRARY

TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT. SECTION 37 OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:-

A COLLECTIVE AGREEMENT IS, SUBJECT TO AND FOR THE PURPOSES OF THIS ACT, BINDING UPON THE EMPLOYER AND UPON THE TRADE UNION THAT IS A PARTY TO THE AGREEMENT WHETHER OR NOT THE TRADE UNION IS CERTIFIED AND UPON THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN THE AGREEMENT.

THE COLLECTIVE AGREEMENT THUS WAS BINDING UPON THE RESPONDENT TRADE UNION, AND THE PROCURING OF THE DISMISSAL OF THE COMPLAINANT IN VIOLATION OF THIS AGREEMENT CONSTITUTES, IN OUR OPINION, A DEALING WITH HIM CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT AND ENTITLED HIM TO RELIEF PURSUANT TO THE PROCEDURE ESTABLISHED BY SECTION 65 OF THE ACT. THE LABOUR RELATIONS ACT IS DIRECTED TO THE ESTABLISHMENT AND ENCOURAGEMENT OF COLLECTIVE BARGAINING LEADING TO THE MAKING OF COLLECTIVE AGREEMENTS. SECTION 37, IN AID OF THIS POLICY, DECLARES THE BINDING FORCE OF SUCH AGREEMENTS. THE INTENTION OF THE ACT IN THIS REGARD IS CLEAR. IT IS, IN OUR VIEW, LIKEWISE CLEAR THAT THE DELIBERATE PROCURING OF A WRONGFUL BREACH OF SUCH A BINDING AGREEMENT MUST BE, AT LEAST IN THE CIRCUMSTANCES OF THIS CASE, CONTRARY TO THE ACT. A DIFFERENT VIEW MIGHT APPEAR TO HAVE BEEN EXPRESSED BY THE BOARD IN THE HEIST INDUSTRIAL SERVICES CASE, 63 C.L.L.C. 1123, WHERE THE BOARD STATED:-

FAILURE TO OBSERVE THE TERM OF A COLLECTIVE AGREEMENT, STANDING BY ITSELF, IS NOT A CONTRAVENTION OF ANY PROVISION OF THE ACT. IN SO FAR AS THE COMPLAINANTS HERE REST THEIR CASE ON THE ALLEGED VIOLATION OF THE TERMS OF THE COLLECTIVE AGREEMENT, THEY HAVE THEREFORE FAILED TO ESTABLISH THAT THEY HAVE BEEN DEALT WITH CONTRARY TO THE ACT. INDEED, THE ACT EXPRESSLY PROVIDES IN SECTION 34 THAT THE REMEDY FOR FAILURE TO OBSERVE THE PROVISIONS OF A COLLECTIVE AGREEMENT IS THROUGH THE PROCESSING OF A GRIEVANCE, IN RESPECT OF SUCH FAILURE, TO ARBITRATION.

IN THE HEIST CASE, INDIVIDUAL EMPLOYEES COMPLAINED, PURSUANT TO SECTION 65, THAT THEIR EMPLOYER HAD FAILED TO ABIDE BY THE TERMS OF A COLLECTIVE AGREEMENT, AND THAT THEY HAD BEEN UNABLE TO OBTAIN REDRESS FOR THEIR GRIEVANCES THROUGH THE UNION, WHICH WAS THEIR BARGAINING AGENT, BECAUSE OF THE INACTIVITY OF THE UNION AND ITS OFFICERS IN ADMINISTRATING THE AGREEMENT. IN THE RESULT, THE BOARD DISMISSED THE COMPLAINT, AND WE WOULD WITH RESPECT AGREE. A COMPLAINT IN SIMILAR CIRCUMSTANCES WOULD LIKEWISE BE DISMISSED FOR THE REASONS SET OUT EARLIER IN THIS ENDORSEMENT. IN THE HEIST CASE THE BOARD STATED THAT "APART FROM THE ALLEGATION AS TO THE VIOLATION OF THE COLLECTIVE AGREEMENT, THERE IS, ON THE MATERIAL BEFORE US, NO ALLEGATION OF ANY OTHER ACT OR OMISSION ON THE PART OF THE RESPONDENT OR THE UNION OR THE OFFICIALS OF THE UNION CONCERNED THAT WOULD BRING THE COMPLAINT WITHIN THE PROVISIONS OF SECTION 65 OF THE ACT." IN THE INSTANT CASE, OF COURSE, THERE IS SUCH AN ALLEGATION AND THAT ALLEGATION IS, AS WE HAVE FOUND, SUPPORTED BY THE EVIDENCE.

11. THE BOARD FINDS THAT THE COMPLAINANT HAS BEEN DEALT WITH BY THE RESPONDENTS CONTRARY TO THE LABOUR RELATIONS ACT. HAD THE EMPLOYER BEEN A PARTY TO THIS APPLICATION IT MIGHT HAVE BEEN THAT THE BOARD WOULD HAVE ORDERED

REINSTATEMENT IN EMPLOYMENT OF THE COMPLAINANT. AS IT IS, HOWEVER, THE EMPLOYER IS NOT A PARTY TO THESE PROCEEDINGS, AND NO ORDER COULD BE MADE HEREIN WHICH WOULD BE BINDING UPON THE EMPLOYER. THE RESPONSIBILITY OF THE RESPONDENTS, HOWEVER, IS CLEAR.

12. OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENTS IS AS FOLLOWS:-

THE RESPONDENTS AND THE COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, WHICH HAVE BEEN SUSTAINED BY THE COMPLAINANT BY REASON OF HIS DISCHARGE FROM EMPLOYMENT. SUCH AMOUNT SHALL THEN FORTHWITH BE PAID BY THE RESPONDENTS TO THE COMPLAINANT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN SEVEN DAYS AFTER THE RELEASE OF THIS DETERMINATION, OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF SUCH COMPENSATION, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.

12211-66-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC.
(COMPLAINANT) v. McNAIR PRODUCTS COMPANY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: H. BUCHANAN AND W. HAYNES FOR THE COMPLAINANT, D. F. O. HERSEY AND R. A. McNAIR FOR THE RESPONDENT.

DECISION OF THE BOARD: (OCTOBER 19, 1966).

1. THE COMPLAINANT HAS APPLIED PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT AND COMPLAINS THAT GRAHAM SOOLEY AND LUIGI DEPALMA WERE DISCHARGED FROM THEIR EMPLOYMENT ON AUGUST 29TH, 1966 CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE ACT. THE COMPLAINANT REQUESTS THE BOARD TO REINSTATE THE AGGRIEVED PERSONS IN THEIR EMPLOYMENT AND DIRECTS COMPENSATION FOR ALL LOSS OF EARNINGS AND BENEFITS.

2. IT APPEARS FROM THE EVIDENCE THAT DEPALMA HAD BEEN EMPLOYED BY THE RESPONDENT FOR A PERIOD OF TEN YEARS AND SOOLEY FOR A PERIOD OF TWO YEARS PRIOR TO THEIR DISCHARGE.

3. ON AUGUST 29TH, 1966 AFTER ADVISING THE RESPONDENT'S EMPLOYEES OF THEIR INTENTIONS AT THE MORNING COFFEE BREAK, DEPALMA AND SOOLEY COLLECTED SIGNATURES ON A DOCUMENT OUTSIDE THE RESPONDENT'S PREMISES DURING THE EMPLOYEES' LUNCH PERIOD. THE DOCUMENT READS IN PART AS FOLLOWS:

To: McNAIR PRODUCTS
105 CROCKER AVENUE
ETOBICOKE, ONTARIO.

TORONTO, ONTARIO, AUGUST 29, 1966.

WE, THE UNDERSIGNED EMPLOYEES OF McNAIR PRODUCTS COMPANY, HEREBY DECLARE THAT WE ALL WISH TO BE REPRESENTED BY THE "UNION" AND WITH OUR SIGNATURES BELOW HEREBY GIVE OUR CONSENT TO REGISTER WITH THE "UNION". RETAIL WHOLESALE BAKERY & CONFECTIONERY WORKERS UNION LOCAL 461.

IN ADDITION TO THE ENGLISH WORDS AS SET OUT ABOVE THE DOCUMENT CONTAINED A SIMILAR STATEMENT IN ITALIAN.

4. A TOTAL OF 21 PERSONS SIGNED THE DOCUMENT. ALL BUT ONE OF THE SIGNATURES WERE COLLECTED DURING THE LUNCH PERIOD. HOWEVER, ONE OF THE FEMALE EMPLOYEES IN THE PLANT CALLED DePALMA TO HER WORK STATION DURING WORKING HOURS AND ASKED IF SHE COULD SIGN THE DOCUMENT. DePALMA TESTIFIED THAT ALTHOUGH HE PRODUCED THE DOCUMENT FOR HER SIGNATURE HE DID NOT ASK HER TO SIGN IT BECAUSE SHE HAD ALREADY ASKED HIM IF SHE WOULD BE PERMITTED TO SIGN IT. SHE SIGNED THE DOCUMENT AT THAT TIME WHEN IT WAS PRODUCED BY DePALMA.

5. IT WAS THE INTENTION OF DePALMA AND SOOLEY TO PRESENT THE SIGNED DOCUMENT TO MANAGEMENT APPARENTLY WITH THE HOPE THAT THE RESPONDENT WOULD VOLUNTARILY RECOGNIZE THE UNION AS THEIR BARGAINING AGENT. THE AGGRIEVED PERSON WERE DISCHARGED BEFORE THEY HAD AN OPPORTUNITY TO PRESENT THE DOCUMENT TO MANAGEMENT. HOWEVER, IT WOULD APPEAR FROM OTHER EVIDENCE IN THIS CASE THAT THEY WOULD HAVE BEEN FRUSTRATED IN THEIR HOPES FOR VOLUNTARY RECOGNITION.

6. AT 4:30 P.M. ON AUGUST 29TH AFTER THE AGGRIEVED PERSONS HAD PUNCHED OUT, THEY WERE SUMMONED BY THE PLANT MANAGER AND ADVISED THAT THEIR SERVICES WERE NO LONGER REQUIRED. NO REASON WAS GIVEN FOR THEIR DISCHARGE ALTHOUGH A REASON WAS REQUESTED. THE DISCHARGES TOOK PLACE DURING THE RESPONDENT'S BUSY SEASON.

7. THE RESPONDENT'S PRODUCTION MANAGER TESTIFIED THAT HE HAD RECOMMENDED THAT BOTH AGGRIEVED PERSONS BE DISCHARGED ON PREVIOUS OCCASIONS OVER THE PAST YEAR FOR SUCH REASONS AS HAVING A BOTTLE OF SOFT DRINK AT THEIR WORK STATIONS; HOWEVER, HE COULD NOT RECALL THE LAST TIME HE HAD COMPLAINED TO DePALMA OR SOOLEY ABOUT THEIR WORK. THE PRODUCTION MANAGER FURTHER TESTIFIED THAT THERE WAS ALMOST 100 PER CENT TURNOVER IN EMPLOYEES ANNUALLY.

8. ON THE DAY THE TWO AGGRIEVED PERSONS WERE DISCHARGED, THE PRODUCTION MANAGER HAD NOT NOTICED ANYTHING UNUSUAL ABOUT THE PERFORMANCE OF THEIR WORK.

9. THE PRODUCTION MANAGER TESTIFIED THAT HE HAD BEEN INFORMED BY A FOREMAN THAT AT ABOUT 2:00 P.M. THE FOREMAN HAD BEEN TOLD BY AN EMPLOYEE THAT SOOLEY AND DePALMA HAD APPROACHED THE EMPLOYEE TO SIGN FOR THE UNION. THE FOREMAN ALSO HAD SEEN ONE OF THE GIRLS IN THE PLANT SIGN A PAPER FOR DePALMA. THE FOREMAN ALSO TESTIFIED TO THIS EFFECT. UPON BEING ADVISED BY THE FOREMAN OF THE UNION ACTIVITIES, THE PRODUCTION MANAGER TELEPHONED THE PLANT MANAGER AND THE PRESIDENT'S SECRETARY AND IT WAS DECIDED THAT SOOLEY AND DePALMA SHOULD BE DISMISSED. THE PRODUCTION MANAGER TESTIFIED THAT HE HAD NO KNOWLEDGE OF ANY UNION ACTIVITY BY THE AGGRIEVED PERSONS PRIOR TO AUGUST 29TH.

10. THE PRODUCTION MANAGER FURTHER TESTIFIED THAT BECAUSE HE HAD PREVIOUSLY DECIDED TO DISMISS THE TWO EMPLOYEES THE COMPANY'S DECISION WAS MERELY

PRECIPITATED BY THE FACT THAT THEY WERE ATTEMPTING TO GET EMPLOYEES TO SIGN FOR THE UNION DURING WORKING HOURS ON THE RESPONDENT'S PREMISES. THE COMPANY TOOK THE POSITION THAT THEY WERE ENTITLED TO TAKE THIS ACTION PURSUANT TO THE PROVISIONS OF SECTION 53 OF THE ACT.

11. SECTION 53 READS AS FOLLOWS:

NOTHING IN THIS ACT AUTHORIZES ANY PERSON TO ATTEMPT AT THE PLACE AT WHICH AN EMPLOYEE WORKS TO PERSUADE HIM DURING HIS WORKING HOURS TO BECOME OR REFRAIN FROM BECOMING OR CONTINUING TO BE A MEMBER OF A TRADE UNION.

12. HAVING REGARD TO ALL THE EVIDENCE AND HAVING HAD AN OPPORTUNITY TO ASSESS THE CREDIBILITY OF THE WITNESSES, THE BOARD DOES NOT ACCEPT THE EVIDENCE OF THE RESPONDENT'S PRODUCTION MANAGER THAT THERE HAD BEEN ANY PRIOR DECISION TO DISCHARGE DePalma and Sooley BEFORE THE DAY ON WHICH THE DISCHARGES TOOK PLACE. ON THE CONTRARY, IN A PLANT WHERE THERE IS ALMOST 100 PER CENT TURNOVER OF EMPLOYEES ANNUALLY, IT WOULD BE REASONABLE TO ASSUME IN THE ABSENCE OF EVIDENCE TO THE CONTRARY, THAT EMPLOYEES WITH TWO YEARS' SERVICE IN ONE CASE AND TEN YEARS' SERVICE IN THE OTHER, WERE SATISFACTORY EMPLOYEES. IT WAS PATENT FROM THE COMPLAINTS DIRECTED AGAINST THE TWO AGGRIEVED PERSONS BY THE PRODUCTION MANAGER THAT HE WAS ATTEMPTING TO DREDGE UP PAST EVENTS OF A RELATIVELY TRIVIAL NATURE TO JUSTIFY THE ACTION TAKEN BY THE COMPANY. THERE WAS ABSOLUTELY NO EVIDENCE THAT THERE HAD BEEN ANY REAL COMPLAINT, WITHIN A REASONABLE TIME PRECEDING THE DISCHARGES, AGAINST EITHER SOOLEY OR DePALMA ABOUT THEIR WORK.

13. EVEN IF THE BOARD WERE TO ACCEPT THE RESPONDENT'S INTERPRETATION OF SECTION 53 OF THE ACT, WHICH IN FACT WOULD GRANT THE RESPONDENT A "HUNTING LICENCE", THE BOARD IS NOT SATISFIED THAT THE EVIDENCE IN THIS CASE DISCLOSES THAT EITHER DePALMA OR SOOLEY ATTEMPTED TO "PERSUADE" ANYONE DURING WORKING HOURS TO BECOME A MEMBER OF A TRADE UNION. WE HAVE HEARSAY EVIDENCE CONCERNING WHAT AN EMPLOYEE IS ALLEGED TO HAVE TOLD HIS FOREMAN BUT NO FIRST-HAND EVIDENCE OF THE EVENT AND THERE WAS NO ALLEGATION THAT SUCH FIRST-HAND EVIDENCE WAS NOT AVAILABLE. THERE WAS NO OPPORTUNITY FOR THE COMPLAINANT TO CROSS-EXAMINE THE EMPLOYEE WHO IS ALLEGED TO HAVE MADE THE STATEMENT TO THE FOREMAN AND NO WAY TO DETERMINE WHO INTRODUCED THE SUBJECT OF "UNION" IN THE CONVERSATION OR WHETHER WHAT WAS SAID ACTUALLY AMOUNTED TO AN ATTEMPT TO "PERSUADE".

14. THE EVIDENCE CONCERNING THE FEMALE EMPLOYEE SIGNING A PAPER FOR DePALMA AND DePALMA'S ADMISSION THAT HE ALLOWED HER TO SIGN A PETITION WHEN SHE APPROACHED HIM AND REQUESTED HIM TO DO SO CANNOT BE CHARACTERIZED AS AN ATTEMPT TO "PERSUADE". APPARENTLY, NO PERSUASION WAS NECESSARY BECAUSE THE GIRL HAD ALREADY MADE UP HER MIND TO SIGN THE DOCUMENT BEFORE SHE SPOKE TO DePALMA.

15. THE RESPONDENT REFERRED THE BOARD TO THE RALPH MILROD METAL PRODUCTS LTD. CASE (1964) CCH CANADIAN LABOUR LAW REPORTER, ¶16,007; C.L.S. 76-1616, IN SUPPORT OF ITS POSITION. THE FACTS OF THAT CASE ARE DISTINGUISHABLE FROM THE INSTANT CASE IN THAT APPARENTLY THE BOARD DETERMINED THAT WHILE THE AGGRIEVED PERSON'S UNION ACTIVITIES WERE KNOWN TO THE COMPANY A WEEK AND A HALF PRIOR TO HIS DISCHARGE IT WAS ACKNOWLEDGED BY THE AGGRIEVED PERSON THAT HE HAD ATTEMPTED

TO CAUSE AT LEAST ONE OTHER EMPLOYEE TO JOIN THE TRADE UNION AND THAT HE HAD LEFT HIS WORK STATION TO DO SO DURING HIS WORKING HOURS. IN THAT CASE THE BOARD SAID AS FOLLOWS:

HAVING REGARD TO ALL THE EVIDENCE AND ESPECIALLY THE FACT THAT THE RESPONDENT TOOK NO ACTION, DIRECTLY OR INDIRECTLY AGAINST MR. WELSH, BETWEEN THE TIME MR. MILROD FIRST HAD DISCUSSIONS WITH MR. WELSH ABOUT HIS UNION ACTIVITY AND THE TIME OF HIS DISCHARGE, WE ARE SATISFIED THAT MR. WELSH WOULD NOT HAVE BEEN DISCHARGED HAD HE NOT SOLICITED UNION MEMBERSHIP ON COMPANY PREMISES DURING WORKING HOURS.

THE BOARD FURTHER DETERMINED THAT THE ACTIVITY FOR WHICH THE AGGRIEVED PERSON WAS DISCHARGED WAS NOT THE TYPE OF ACTIVITY PERMITTED UNDER THE ACT AS IT WOULD NOT BE CHARACTERIZED AS THE EXERCISE OF A RIGHT UNDER THE ACT AS CONTEMPLATED BY SECTION 50(A).

16. IN THE INSTANT CASE, THE BOARD IS SATISFIED THAT THE REAL REASON FOR THE DISCHARGE WAS AN ATTEMPT BY THE RESPONDENT TO THWART THE PLANS OF THE EMPLOYEES TO OBTAIN THE SERVICES OF A BARGAINING AGENT.

17. IN THE DELTA STEEL FABRICATING CO. LTD. CASE, BOARD FILE NO. 6894-63-U, OCTOBER 8, 1963; THE BOARD SAID:

SECTION 53 OF THE ACT DOES NOT PROHIBIT ANYONE FROM ATTEMPTING TO PERSUADE EMPLOYEES AT THEIR PLACES OF WORK DURING THEIR WORKING HOURS TO CONTINUE TO BE MEMBERS OF A TRADE UNION. ITS PURPOSE IS TO AFFORD TO AN EMPLOYER CERTAIN CIRCUMSTANCES AN ANSWER TO THE CHARGE THAT, BY TAKING DISCIPLINARY ACTION AGAINST A PERSON WHO HAS ENGAGED IN THE CONDUCT SPELLED OUT IN THE SECTION, HE HAS IPSO FACTO CONTRAVENED THE UNFAIR PRACTICE SECTIONS OF THE ACT, PARTICULARLY SECTIONS 48 AND 50.

18. WHEN ATTEMPTING TO DETERMINE WHETHER THE STEPS TAKEN BY AN EMPLOYER TO PUT AN END TO PERSUASION BY EMPLOYEES DURING WORKING HOURS TO CAUSE OTHER EMPLOYEES TO BECOME MEMBERS OF A TRADE UNION ARE TAKEN IN GOOD FAITH PURSUANT TO THE PROVISIONS OF SECTION 53 OF THE ACT OR ARE TAKEN PRIMARILY TO THWART THE EMPLOYEES' ATTEMPT TO JOIN A TRADE UNION OF THEIR OWN CHOICE, IT IS OFTEN VERY REVEALING TO LOOK AT THE NATURE OF THE DISCIPLINARY ACTION TAKEN. QUITE OBVIOUSLY, A WARNING TO SUCH EMPLOYEES WOULD BE SUFFICIENT TO ACCOMPLISH THE EMPLOYER'S PURPOSES IN MOST CASES. A SUSPENSION MAY BE NECESSARY IN OTHER CASES WHERE THE WARNING IS IGNORED OR THERE IS REAL INTERFERENCE WITH PRODUCTION OR PLANT DISCIPLINE. IN EXTREME CIRCUMSTANCES IT MAY WELL BE THAT THE DISCHARGE OF EMPLOYEES IS THE ONLY WAY TO PUT AN END TO THE PRACTICE. WHERE, HOWEVER, THE EXTREME REMEDY IS ADOPTED WITHOUT SO MUCH AS A PRIOR CAUTION, EVEN IN THE FORM OF A PLANT RULE TO THAT EFFECT, A DOUBT IS CREATED AS TO THE TRUE INTENTIONS OF THE EMPLOYER.

19. AS THE BOARD STATED IN THE NORFISH LIMITED CASE, O.L.R.B. MONTHLY REPORT JUNE 1965, P. 226:

WE ARE OF OPINION THAT SECTION 53 SHOULD BE USED BY AN EMPLOYER AS A SHIELD AND NOT AS A SWORD. SECTION 53 SHOULD NOT BE RELIED UPON TO JUSTIFY A DISCHARGE, WHERE THE REAL REASON FOR THE DISCHARGE IS AN ATTEMPT TO THWART THE UNION.

IN THE INSTANT CASE, IT BECAME READILY APPARENT THAT NO ATTEMPT WAS MADE BY THE RESPONDENT TO VERIFY ITS INFORMATION CONCERNING THE ALLEGED ATTEMPTS TO PERSUADE. THERE IS NO EVIDENCE THAT THE ACTIVITIES OF THE AGGRIEVED PERSONS WERE CAUSING DISSENT AMONG EMPLOYEES OF THE RESPONDENT OR THAT THERE WAS ANY REAL INTERFERENCE WITH THE QUALITY OR QUANTITY OF PRODUCTION, CUSTOMER RELATIONS, SAFETY REGULATIONS, PLANT RULES OR ANY OTHER RELATED FACTOR WHICH THE RESPONDENT WOULD HAVE BEEN JUSTIFIED IN PROTECTING. ON THE CONTRARY, THE RESPONDENT'S PRODUCTION MANAGER TESTIFIED THAT THERE WAS NOTHING UNUSUAL ABOUT THE PERFORMANCE OF THE AGGRIEVED PERSONS' WORK ON THE DAY IN QUESTION. BY USING HEARSAY EVIDENCE AS JUSTIFICATION FOR THE EXTREME REMEDY ADOPTED WITHOUT ANY ATTEMPT TO STOP THE ACTIVITY IN ANY OTHER WAY AND BY DISCHARGING THE AGGRIEVED PERSONS WITHOUT EXPLANATION AND THEN ATTEMPTING TO BOLSTER THE REASONS FOR THE DISCHARGE IN A MANNER IN WHICH THE RESPONDENT DID AT THE HEARING, IT IS OBVIOUS TO THE BOARD THAT THE DISCHARGES WERE INTENDED TO PUT AN END TO ALL UNION ACTIVITY AND NOT SIMPLY PERSUASION ON COMPANY PREMISES DURING WORKING HOURS.

20. IN THE BARBARA JARVIS AND ASSOCIATED MEDICAL SERVICES INCORPORATED CASE, CCH CANADIAN LABOUR LAW CASES, 1960-1964, ¶16,218, AT PAGE 980, THE BOARD STATED AS FOLLOWS:

HAVING REGARD TO THE PROVISIONS OF THE ACT READ AS A WHOLE, I AM OF OPINION THAT ORGANIZATION OF A TRADE UNION AND COLLECTIVE BARGAINING ARE TWO OF THE ACTIVITIES WHICH ARE CONTEMPLATED AS COMING WITHIN THE SCOPE OF SECTION 3 AND THAT FREEDOM TO PARTICIPATE IN THESE ACTIVITIES IS AMONG THE "RIGHTS" DEALT WITH BY SECTION 50 OF THE ACT. THE LAST-MENTIONED SECTION FORBIDS AN EMPLOYER TO "REFUSE ... TO CONTINUE TO EMPLOY A PERSON ... BECAUSE THE PERSON WAS OR IS A MEMBER OF A TRADE UNION OR WAS OR IS EXERCISING ANY OTHER RIGHTS UNDER [THE] ACT". AN EMPLOYER WHO DISCHARGES A PERSON FOR INFRACTION OF A "PLANT RULE" WHICH FORBIDS AN EMPLOYEE TO EXERCISE HIS RIGHTS UNDER THE ACT IS THEREFORE ACTING IN VIOLATION OF SECTION 50 OF THE ACT. THIS CONCLUSION DOES NOT MEAN THAT AN EMPLOYER HAS BEEN DEPRIVED BY THE LEGISLATION OF AUTHORITY TO MAINTAIN ORDER ON HIS PREMISES AND TO ENSURE THAT PRODUCTIVITY WILL NOT SUFFER. IF THE PRIMARY AND BONA FIDE PURPOSE OF ANY RULE HE ESTABLISHES WITH REGARD TO ACTIVITY ON HIS PREMISES OUTSIDE OF WORKING HOURS OR OF A KIND NOT COVERED BY SECTION 53 IS IN FURTHERANCE OF THE OBJECTIVES JUST MENTIONED OR LIKE OBJECTIVES, NO EXCEPTION CAN BE TAKEN TO THE RULE, EVEN THOUGH AN INCIDENTAL EFFECT OF THE RULE MAY BE TO CURTAIL THE OPPORTUNITY A PERSON IN HIS EMPLOY HAS TO EXERCISE HIS RIGHTS UNDER THE ACT.

SECTION 53, THEREFORE, IS INTENDED TO PROVIDE THE EMPLOYER WITH "AUTHORITY TO MAINTAIN ORDER ON HIS PREMISES AND TO ENSURE THAT PRODUCTION WILL NOT SUFFER". THERE IS NO SUGGESTION THAT ANYTHING DONE BY DePALMA AND SoOLEY ON THE DAY OF THEIR DISCHARGE IN ANY WAY DISTURBED THE ORDER OF THE RESPONDENT'S PREMISES OR INTERFERED WITH PRODUCTION. IF THERE HAD BEEN SUCH EVIDENCE THEN IT WOULD TEND TO SUPPORT THE BONA FIDE PURPOSE OF THE EMPLOYER'S ACTIONS.

21. ALL OF THE EVIDENCE IN THIS CASE MILITATES AGAINST THE CONCLUSION THAT THE EMPLOYER, IN DISCHARGING THE TWO AGGRIEVED PERSONS, ACTED IN A BONA FIDE MANNER. ON THE CONTRARY, BY ATTEMPTING TO SUPPORT THE DISCHARGES IN THE MANNER IN WHICH THE RESPONDENT DID, BY DIGGING UP RELATIVELY TRIVIAL OFFENCES WHICH OCCURRED BETWEEN SIX MONTHS AND ONE YEAR AGO, ESPECIALLY WHEN REGARD IS HAD TO THE LENGTH OF SERVICE OF THE EMPLOYEES IN QUESTION, THE BOARD FINDS THAT THE RESPONDENT'S ACTIONS, IN EFFECTING THE DISCHARGES OF BOTH AGGRIEVED PERSONS, WERE INTENDED TO THWART THE WISHES OF THE EMPLOYEES TO SELECT A BARGAINING AGENT OF THEIR OWN CHOICE WHICH IS A RIGHT THEY ENJOYED UNDER SECTION 3 OF THE ACT. THE RESPONDENT'S ACTIONS WERE THEREFORE CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE ACT.

22. THE BOARD THEREFORE DETERMINES THAT BOTH GRAHAM SoOLEY AND LUIGI DePALMA BE REINSTATED FORTHWITH IN THE POSITIONS HELD BY THEM AT THE TIME OF THEIR DISCHARGE.

23. WITH RESPECT TO THE CLAIM FOR COMPENSATION FOR LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, THE BOARD IS NOT SATISFIED THAT DePALMA MADE ALL REASONABLE EFFORTS TO MITIGATE HIS LOSS. HE TESTIFIED THAT HE DID NOT MAKE ANY ATTEMPT TO OBTAIN ALTERNATE EMPLOYMENT BECAUSE HE WAS AWAITING THE OUTCOME OF THIS APPLICATION. ON SEPTEMBER 29TH WHEN HE MADE HIS FIRST APPLICATION FOR EMPLOYMENT HE WAS SUCCESSFUL AND COMMENCED WORK THE FOLLOWING DAY. THERE IS NOTHING BEFORE US TO SUGGEST THAT HAD HE MADE A SIMILAR APPLICATION ON THE DAY FOLLOWING HIS DISCHARGE HE WOULD NOT HAVE MET WITH THE SAME SUCCESS. IN THESE CIRCUMSTANCES, THE BOARD IS OF OPINION THAT DePALMA IS ENTITLED TO ONE DAY'S PAY WHICH THE BOARD HAS FIXED AT \$11.20 WHICH AMOUNT COVERS THE LOSS OF EARNINGS BETWEEN THE DATE OF HIS DISCHARGE AND THE DATE OF THE HEARING IN THIS MATTER FOR WHICH HE IS ENTITLED TO COMPENSATION.

24. SINCE MR. SoOLEY WAS NOT CALLED TO TESTIFY THE BOARD HAS NO INFORMATION CONCERNING THE ATTEMPTS MADE BY HIM TO MITIGATE HIS LOSS AND ACCORDINGLY THE BOARD IS NOT PREPARED TO FIX ANY AMOUNT AS COMPENSATION FOR LOSS OF EARNINGS OR EMPLOYMENT BENEFITS FOR MR. SoOLEY, BETWEEN THE DATE OF HIS DISCHARGE AND THE DATE OF THE HEARING IN THIS MATTER.

25. THE BOARD DETERMINES, HOWEVER, THAT THE PARTIES MEET FORTHWITH WITH A VIEW ON AGREEING ON THE AMOUNT OF LOSS OF EARNINGS, IF ANY, SUSTAINED BY MR. SoOLEY AND MR. DePALMA BETWEEN THE DATE OF THE HEARING IN THIS MATTER AND THE DATE OF THEIR REINSTATEMENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO ABOVE WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE AMOUNT TO BE PAID TO MR. SoOLEY AND MR. DePALMA FOR LOSS OF EARNINGS,

IF ANY, SUSTAINED BY THEM BETWEEN THE DATE OF THE FIRST HEARING IN THIS MATTER AND THE DATE OF THEIR REINSTATEMENT.

12252-66-U: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 421 (COMPLAINANT) v. THE KVP COMPANY LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: DAVID LEWIS, Q.C., FOR THE COMPLAINANT, AND D. F. O. HERSEY AND H.S. REID FOR THE RESPONDENT.

DECISION OF THE BOARD: (OCTOBER 28, 1966).

1. THIS IS A COMPLAINT FOR RELIEF PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON WAS DISCHARGED FROM HIS EMPLOYMENT BY THE RESPONDENT IN VIOLATION OF SECTION 50(A) OF THE ACT.

2. THE AGGRIEVED PERSON, WILFRED PEEL, WAS AN EMPLOYEE OF SOME SEVEN YEARS STANDING WITH THE RESPONDENT. HE WAS HIRED AS AN ASSISTANT CAMP CLERKS, WAS PROMOTED TO CAMP CLERK AND LATER TO SENIOR CAMP CLERK, WHICH POSITION HE HELD AT THE TIME OF HIS DISCHARGE. HE WAS STATIONED AT CAMP 8 OF THE RESPONDENT'S WOODS OPERATIONS.

3. MR. PEEL WAS DISCHARGED BY THE RESPONDENT FOLLOWING A MEETING, HELD ON SEPTEMBER 7TH, BETWEEN MR. PEEL AND MR. BOCKING, DISTRICT SUPERINTENDENT, MR. SULLIVAN, DIVISIONAL CONTROLLER, AND MR. SMITH, WOODS ACCOUNTANT, ALL OF WHOM WERE MR. PEEL'S SUPERIORS IN THE COMPANY. AT THAT TIME MR. SULLIVAN (WHO WAS NOT CALLED TO GIVE EVIDENCE) REFERRED TO THREE INCIDENTS ON WHICH THE RESPONDENT RELIED IN ITS DECISION TO DISCHARGE MR. PEEL. THESE INCIDENTS WERE AS FOLLOWS:-

- (1) AT THE BEGINNING OF APRIL, 1966, MR. PEEL WAS ABSENT FROM WORK WITHOUT AUTHORIZATION FOR A PERIOD OF FIVE DAYS. DURING THIS PERIOD HE WAS IN ESPANOLA, ATTENDING, FROM TIME TO TIME, AT THE OFFICES OF THE COMPANY ON A MATTER RELATING TO THE DESCRIPTION OF THE BARGAINING UNIT FOR WHICH THE COMPLAINANT WAS THEN SEEKING TO BECOME BARGAINING AGENT. PERMISSION HAD BEEN GIVEN FOR A SIMILAR ABSENCE FOR A PERIOD OF ONE DAY ON A PREVIOUS OCCASION, AND IT WAS MR. PEEL'S FEELING THAT HIS ABSENCE FROM CAMP 8 WOULD HAVE BEEN AUTHORIZED ON THE OCCASION IN QUESTION. HE HAD SOUGHT AUTHORIZATION FROM THE FOREMAN AND THE ASSISTANT FOREMAN, BUT EACH OF THESE PERSONS WAS UNAVAILABLE. SHORTLY AFTER LEAVING THE CAMP HE HAD MET THE SUPERINTENDENT, MR. BOCKING, AND HAD ADVISED HIM THAT HE WAS GOING TO ESPANOLA. MR. BOCKING WAS UNDER THE MISTAKEN IMPRESSION THAT MR. PEEL HAD BEEN SUMMONED TO ESPANOLA BY A SENIOR OFFICIAL OF THE RESPONDENT, BUT THIS MISUNDERSTANDING WAS NO FAULT OF MR. PEEL'S. LATER, ON BEING INFORMED THAT MR. PEEL

HAD NEVER RECEIVED EXPRESS AUTHORIZATION TO BE ABSENT, MR. BOCKING MADE NO OBJECTION. INDEED, THROUGHOUT MOST OF MR. PEEL'S STAY IN ESPANOLA, COMPANY OFFICIALS WERE WELL AWARE THAT HE HAD NO EXPRESS AUTHORIZATION FOR HIS ABSENCE FROM WORK, BUT MADE NO OBJECTIONS. MR. PEEL'S SALARY WAS DISALLOWED FOR THE FIVE DAYS ABSENCE. HE WAS ADVISED THAT "ANY FURTHER BREACHES OF THIS RULE" WOULD CALL FOR DISCIPLINARY ACTION. THERE IS NO EVIDENCE OF ANY FURTHER BREACH. MR. PEEL'S ABSENCE FROM CAMP 8, AT THAT PARTICULAR TIME, DID NOT AFFECT THE WORK THEN TO BE PERFORMED BY THE CAMP CLERKS.

- (2) AT THE END OF MAY, 1966, MR. PEEL EXPERIENCED DIFFICULTY IN COMPLETING HIS MONTH-END REPORTS ON TIME. AT THAT PERIOD HE WAS WORKING BY HIMSELF ON WORK FOR WHICH, IN THE PAST, HE HAD HAD TWO ASSISTANTS. HE WAS WORKING APPROXIMATELY TWELVE HOURS A DAY. THE WORK BEING LATE, THREE MEMBERS OF THE COMPANY'S WOODS ACCOUNTING STAFF CAME TO CAMP 8 AND ASSISTED IN THE COMPLETION OF THE MONTH-END REPORTS. FOLLOWING THIS, AN ASSISTANT WAS POSTED TO CAMP 8 TO ASSIST MR. PEEL. WHILE IT IS TRUE THAT MR. PEEL'S WORK WAS NOT COMPLETED ON TIME ON THAT OCCASION, IT IS PERFECTLY CLEAR, FROM ALL OF THE EVIDENCE, THAT NO CRITICISM COULD PROPERLY BE DIRECTED TO HIM ON THAT ACCOUNT.
- (3) ON AUGUST 25TH, 1966, MR. PEEL, IN THE COURSE OF HIS DUTIES, COMPLETED A FORM RELATING TO ONTARIO HOSPITAL SERVICES COMMISSION DEDUCTIONS FROM EMPLOYEES' WAGES. THE FORM WAS PREPARED IN PART AT THE RESPONDENT'S OFFICE IN ESPANOLA, AND IN PART IN THE WOODS OFFICE. ON THE OCCASION IN QUESTION, THE FORM HAD BEEN PREPARED IN THE ESPANOLA OFFICE IN A SOMEWHAT DIFFERENT MANNER, WHICH SEEMED LESS EFFICIENT TO MR. PEEL. AFTER COMPLETING THE FORM, MR. PEEL INSCRIBED A NOTE THEREON, INDICATING HIS REASONS FOR PREFERRED THE PREVIOUS METHOD. THE NOTE WAS ADDRESSED "TO THE IDIOT WHO CHANGED THIS FORM". MR. PEEL BELIEVED THAT THE PERSON WHO HAD PREPARED THE FORM IN THE ESPANOLA OFFICE WAS A FRIEND OF HIS (WHO HAD PREPARED SUCH FORMS PREVIOUSLY), AND THUS ADDRESSED THE NOTE IN WHAT WAS INTENDED TO BE A JOGULAR FASHION. IT WAS THIS ENTIRELY TRIVIAL MATTER WHICH WAS THE "CULMINATING INCIDENT" ON WHICH THE RESPONDENT RELIED IN DISCHARGING MR. PEEL.

4. THERE WAS ALSO EVIDENCE OF AN OCCASION WHEN A COPY OF AN ABUSIVE NOTE WRITTEN BY MR. PEEL TO THE FOREMAN OF CAMP 1 FELL INTO THE HANDS OF THE FOREMAN. MR. PEEL, HAVING THOUGHT BETTER OF THE MATTER, DESTROYED THE NOTE, WHICH WAS NEVER SENT. HE INADVERTENTLY FORGOT TO DESTROY THE CARBON COPY OF THE NOTE WHICH CAME TO THE ATTENTION OF THE FOREMAN, ALTHOUGH MR. PEEL HAD NOT INTENDED THIS RESULT. THERE IS ALSO EVIDENCE OF THE OCCASIONAL FAILURE OF THE OFFICE STAFF AT CAMP 8 TO PROVIDE ADEQUATE SERVICE FOR EMPLOYEES IN THE EARLY MORNINGS, BUT THIS EVIDENCE IS NOT PRECISE AND, IN ALL THE CIRCUMSTANCES, CANNOT CARRY MUCH WEIGHT. IT DOES NOT APPEAR TO HAVE BEEN CONSIDERED BY THE RESPONDENT AT THE TIME OF MR. PEEL'S DISCHARGE.

5. IN OUR VIEW, THE FOREGOING INCIDENTS COULD NOT BE TAKEN TO PROVIDE REASONABLE JUSTIFICATION FOR THE DISCHARGE OF MR. PEEL. AS TO THE INCIDENT IN APRIL, MR. PEEL MADE REASONABLE EFFORTS TO AND DID ADVISE THE RESPONDENT OF HIS ABSENCE, AND RECEIVED NO OBJECTION. HE DID NOT RECEIVE PAY FOR THE PERIOD IN QUESTION. AS TO THE INCIDENT IN MAY, IT IS DIFFICULT TO SEE HOW ANY CRITICISM COULD BE DIRECTED AT MR. PEEL WITH RESPECT TO IT. HE WORKED LONG HOURS ON A JOB FOR WHICH MORE STAFF WAS REQUIRED. AS TO THE THIRD INCIDENT, THE NOTE WAS HARMLESS AND HAD BEEN WELL INTENDED. THE MATTER WAS, AS WE HAVE INDICATED, QUITE TRIVIAL. IN AN APPLICATION UNDER SECTION 65 OF THE LABOUR RELATIONS ACT, HOWEVER, THE ISSUE IS NOT WHETHER THE ACTION OF THE RESPONDENT IS JUSTIFIED, BUT WHETHER, ON A BALANCE OF PROBABILITIES, THE AGGRIEVED PERSON HAS BEEN DEALT WITH CONTRARY TO THE ACT, AND THE ONUS IS UPON THE COMPLAINANT TO ESTABLISH THIS.

6. MR. PEEL HAD BEEN ACTIVE IN THE ORGANIZING CAMPAIGN CONDUCTED BY THE COMPLAINANT TRADE UNION, WHOSE APPLICATION FOR CERTIFICATION WAS PENDING AT THE MATERIAL TIMES, AND INDEED, HAD BEEN ELECTED PRESIDENT OF THE UNION. THE RESPONDENT WAS WELL AWARE OF MR. PEEL'S POSITION IN THE UNION AND ACTIVITY ON ITS BEHALF. IT IS NOT SUGGESTED THAT SUCH ACTIVITY INTERFERED IN ANY WAY WITH HIS PERFORMANCE OF HIS DUTIES. IT IS SIGNIFICANT, HOWEVER, THAT THE DISSATISFACTION OF HIS SUPERIORS WITH MR. PEEL AS AN EMPLOYEE DATES FROM NOVEMBER, 1965, THE TIME OF THE UNION ORGANIZING CAMPAIGN. THE EVIDENCE IS THAT CERTAIN OF MR. PEEL'S SUPERIORS DID NOT REGARD THE UNION AS A GOOD THING FOR THE EMPLOYEES, AND EXPRESSED THIS OPINION TO THE EMPLOYEES FROM TIME TO TIME. IT SHOULD, IN FAIRNESS TO THE RESPONDENT, BE ADDED THAT THERE IS NOTHING TO SUGGEST THAT THE MANAGEMENT OF THE RESPONDENT DELIBERATELY ADOPTED A COURSE OF CONDUCT DIRECTED AGAINST THE TRADE UNION AS SUCH.

7. WHERE THE STATED REASONS FOR THE DISCHARGE OF AN EMPLOYEE ARE WITHOUT MERIT, AS IN THE INSTANT CASE; WHERE THE EMPLOYEE HAS BEEN ENGAGED IN UNION ACTIVITY AND THIS ACTIVITY HAS BEEN KNOWN TO THE EMPLOYER, AS IN THE INSTANT CASE; AND WHERE MEMBERS OF MANAGEMENT HAVE EXPRESSED OPPOSITION TO THE TRADE UNION, AS IN THE INSTANT CASE, IT IS REASONABLE TO CONCLUDE THAT THE REAL REASON FOR THE DISCHARGE OF THE EMPLOYEE WAS HIS ACTIVITY ON BEHALF OF THE UNION. THIS CONCLUSION IS SUPPORTED IN THE INSTANT CASE BY THE FACT THAT MR. PEEL HAD BEEN A SUCCESSFUL AND WELL REGARDED EMPLOYEE OF THE RESPONDENT.

8. HAVING REGARD TO ALL OF THE EVIDENCE AND ARGUMENTS PRESENTED AT THE HEARING OF THIS MATTER, THE BOARD IS OF OPINION THAT WILFRED PEEL WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT.

9. AT THE HEARING, FOLLOWING ARGUMENT ON THE MERITS OF THE CASE, COUNSEL FOR THE COMPLAINANT SOUGHT LEAVE TO ADDUCE EVIDENCE RELATING TO THE DAMAGES SUFFERED BY MR. PEEL AS A RESULT OF HIS DISMISSAL. COUNSEL FOR THE RESPONDENT OBJECTED TO THE BOARD HEARING SUCH EVIDENCE. THE BOARD PROCEEDED TO HEAR THE EVIDENCE, RESERVING ITS RULING AS TO WHETHER IT SHOULD BE ADMITTED. THE EVIDENCE REVEALS THAT MR. PEEL RECEIVED ONE MONTH'S SEVERANCE PAY FROM THE RESPONDENT, AND THAT HE HAD, SINCE THE TIME OF HIS DISCHARGE, BEEN EMPLOYED BY THE COMPLAINANT TRADE UNION, ALTHOUGH THERE HAD BEEN NO AGREEMENT AS TO ANY SALARY PAYABLE TO HIM. NO OTHER STEPS WERE TAKEN BY HIM TO MITIGATE HIS LOSSES.

ASSUMING THE ADMISSIBILITY OF THIS EVIDENCE, IT IS CLEAR THAT IN THESE CIRCUMSTANCES NO ORDER WOULD BE MADE AS TO ANY COMPENSATION PAYABLE BY THE RESPONDENT TO MR. PEEL. IT IS NOT NECESSARY, THEREFORE, FOR THE BOARD TO MAKE ANY RULING WITH RESPECT TO THIS EVIDENCE.

10. OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:-

THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY WILFRED PEEL IN THE SAME OR LIKE EMPLOYMENT, WITH THE SAME SALARY AND EMPLOYMENT BENEFITS AS HE WAS RECEIVING AT THE TIME OF HIS DISCHARGE ON SEPTEMBER 7TH, 1966.

INDEXED ENDORSEMENT - SECTION 47(A)

12212-66-M: LOCAL 9-599, OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) v. BP MARKETING CANADA LIMITED; BP MARKETING CANADA LIMITED, SACCO FUEL OIL DIVISION; FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS & ALLIED EMPLOYEES OF ONTARIO, LOCAL UNION 352, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: N. S. ALLISON AND C. R. K. CLARK FOR THE APPLICANT A.A. HOFFMANN FOR BP MARKETING CANADA LIMITED, G. BELLERBY FOR BP MARKETING CANADA LIMITED, SACCO FUEL OIL DIVISION, AND S. L. ROBINS, Q.C., J. HURD AND WILBERT LYONS FOR FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS & ALLIED EMPLOYEES OF ONTARIO, LOCAL UNION 352, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.

DECISION OF THE BOARD: (OCTOBER 24, 1966).

1. THE NAMES "BRITISH PETROLEUM (CANADA) LTD.; SACCO FUEL OIL DIVISION OF SCOTCH ANTHRACITE COAL CO. LTD.; FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS & ALLIED EMPLOYEES LOCAL UNION No. 352, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAMES OF THE RESPONDENTS IS AMENDED TO READ: "BP MARKETING CANADA LIMITED; BP MARKETING CANADA LIMITED, SACCO FUEL OIL DIVISION; FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS & ALLIED EMPLOYEES OF ONTARIO, LOCAL UNION 352, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA".

2. THE APPLICANT HAS FAILED TO SUPPLY SUFFICIENT EVIDENCE WITH RESPECT TO ITS STATUS AS BARGAINING AGENT OF EMPLOYEES OF THE RESPONDENT BP MARKETING CANADA LIMITED, AND AS TO THE NATURE OF THE CORPORATE TRANSACTIONS AND THE MOVEMENT OF EMPLOYEES SAID TO HAVE TAKEN PLACE, SO AS TO ENABLE THE BOARD TO DISPOSE OF THE APPLICATION UNDER THE PROVISIONS OF SECTION 47A OF THE LABOUR RELATIONS ACT.

3. THE APPLICATION IS ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENTS - SECTION 79(2)

11552-65-M: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. MANNESMANN TUBE COMPANY, LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: LORNE INGLE AND BURRIS ORMSBY FOR THE APPLICANT, T. F. STORIE FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, FOR THE MAJORITY AND DISSENTING DECISIONS OF BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY: (OCTOBER 27, 1966).

1. THE APPLICANT HAS APPLIED PURSUANT TO THE PROVISIONS OF SECTION 79(2) OF THE LABOUR RELATIONS ACT FOR DETERMINATION OF THE QUESTION WHETHER CERTAIN PERSONS ARE EMPLOYEES OF THE RESPONDENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.
2. THE BOARD'S EXAMINER WAS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF THE PERSONS IN QUESTION ON MAY 25TH, 1966 AND HIS REPORT PURSUANT TO HIS APPOINTMENT WAS SERVED ON AUGUST 23RD, 1966. FOLLOWING THE FILING OF OBJECTIONS TO THE REPORT BY THE PARTIES, THE EXAMINER, IN ACCORDANCE WITH THE BOARD'S PRACTICE, PREPARED A SUPPLEMENTARY REPORT DATED AUGUST 30TH, 1966 WHEREIN THE EXAMINER REPLIED TO THE OBJECTIONS OF THE PARTIES.
3. AT THE HEARING DIRECTED BY THE BOARD TO HEAR REPRESENTATIONS AS TO WHAT EFFECT SHOULD BE GIVEN TO THE EXAMINER'S REPORTS, BOTH PARTIES AGREED THAT THE REPORT OF THE EXAMINER DATED AUGUST 23RD, 1966 AS AMENDED BY A SUPPLEMENTARY REPORT DATED AUGUST 30TH, 1966 CONSTITUTES ALL THE EVIDENCE IN THIS MATTER.
4. MR. M. C. GOSLING, ONE OF THE PERSONS IN DISPUTE, IS CLASSIFIED BY THE RESPONDENT AS A METALLURGIST. HOWEVER, IT IS AGREED THAT HE IS NOT A MEMBER OF THE ASSOCIATION OF PROFESSIONAL ENGINEERS OF ONTARIO. HAVING REGARD TO THE BOARD'S DECISION IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1966, P. 167, HE CANNOT BE CLASSIFIED AS A PERSON WHO IS A MEMBER OF THE ENGINEERING PROFESSION ENTITLED TO PRACTICE IN ONTARIO AND EMPLOYED IN A PROFESSIONAL CAPACITY AS PROVIDED BY SECTION 1(3)(A) OF THE LABOUR RELATIONS ACT. ALL FOUR TESTS SET OUT IN THAT SECTION MUST BE SATISFIED BEFORE A PERSON MAY BE DEEMED NOT TO BE AN EMPLOYEE FOR THE PURPOSES OF THE ACT.
5. WHILE MR. GOSLING APPARENTLY IS A VERY HIGHLY QUALIFIED AND SKILLED TECHNOLOGIST, OUR VIEW OF THE EVIDENCE IS THAT ALTHOUGH HE PROVIDES TECHNICAL INFORMATION WHICH IS REQUIRED BY MANAGEMENT, EVEN THOUGH HE REQUIRES HIS EXCEPTIONAL SKILL TO PERFORM THIS SERVICE, HE IS NOT THE PERSON WHO MAKES THE DECISION ON THE INFORMATION PROVIDED. HE IS THE SOURCE OF THE INFORMATION WHICH HE ACQUIRES BY MAKING TESTS FOR THE PURPOSES OF QUALITY CONTROL AND AT TIMES CERTIFIES THE ACCURACY OF SUCH TESTS. IN OUR VIEW, SINCE HE DOES NOT HAVE THE FUNCTION OF MAKING RESPONSIBLE INDEPENDENT DECISIONS (WHICH WOULD BE THE FUNCTION OF MANAGEMENT) THERE IS NO REASON TO FIND THAT HE IS NOT AN EMPLOYEE.

FOR THE PURPOSES OF THE ACT SOLELY BECAUSE OF HIS EDUCATIONAL QUALIFICATIONS AND TECHNICAL SKILL WHICH HE USES IN THE PERFORMANCE OF HIS WORK.

6. IN ADDITION, WHILE SOME OF THE PERSONS WITH WHOM WE ARE CONCERNED HAVE CERTAIN SUPERVISORY FUNCTIONS IN LIMITED AND PREDETERMINED AREAS, THEIR FUNCTIONS ARE NOT SUCH AS WOULD CAUSE THEM TO BE CLASSIFIED AS MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. SUCH FUNCTIONS ARE INCIDENTAL TO THEIR MAIN JOB OF PERFORMING WORK SIMILAR TO OTHER PERSONS IN THE BARGAINING UNIT. THESE PERSONS WORK ALONG WITH OTHER PERSONS IN THE BARGAINING UNIT MORE THAN FIFTY PER CENT OF THEIR WORK DAY AND WHILE THEY ARE EMPOWERED TO MAKE CERTAIN RECOMMENDATIONS THEY HAVE NO POWER TO MAKE INDEPENDENT DECISIONS IN THE PERFORMANCE OF THEIR JOB. IN OUR OPINION, THEY HAVE NO REAL AUTHORITY TO MATERIALLY AFFECT THE EMPLOYMENT RELATIONSHIP BETWEEN THE RESPONDENT AND OTHER EMPLOYEES AND THEIR RELATIONSHIP WITH THE OTHER EMPLOYEES ON BEHALF OF THE RESPONDENT IS IN THE NATURE OF THAT OF A LEAD-HAND.

7. HAVING CONSIDERED ALL THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORTS AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, AND HAVING TAKEN INTO CONSIDERATION THE INDICIA, OF MANAGEMENT AND OF PERSONS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS, AS SET FORTH BY THE BOARD IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, BOARD FILE NO. 10775-65-R, DATED SEPTEMBER 14, 1966, THE BOARD DECLARES THAT WALLY DELLO, WILLIAM HAMMOND, G. BRINKMAN, R. CARSCADDEN, G. LINDSAY, R. WEDGEBURY AND M. C. GOSLING DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

8. THE BOARD FURTHER DECLARES THAT MRS. J. WILLETS WHO COMPILES INFORMATION FOR AND TYPES ARBITRATION BRIEFS IN ADDITION TO OTHER LABOUR RELATIONS MATTERS IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS THEREFORE NOT AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

9. THE BOARD FURTHER DECLARES THAT MR. E. THOMAS WHO SPENDS SEVENTY-FIVE PER CENT OF HIS TIME SUPERVISING TEN OTHER EMPLOYEES EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS THEREFORE NOT AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT. IN MAKING THIS DECLARATION THE BOARD HAS TAKEN INTO CONSIDERATION THE FACT THAT MR. THOMAS DOES PERFORM SOME WORK SIMILAR TO OTHER PERSONS INCLUDED IN THE BARGAINING UNIT. HOWEVER, IN THE BOARD'S OPINION, SUCH WORK PERFORMED BY MR. THOMAS IS INCIDENTAL TO HIS MAIN FUNCTION OF SUPERVISING OTHER EMPLOYEES.

10. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT GUNTHER WEBER EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS THEREFORE NOT AN EMPLOYEE FOR THE PURPOSES OF THE ACT, AND THAT D. SMYTH IS A MEMBER OF THE ASSOCIATION OF PROFESSIONAL ENGINEERS OF ONTARIO AND IS ACCORDINGLY A MEMBER OF THE ENGINEERING PROFESSION ENTITLED TO PRACTISE IN ONTARIO AND IS EMPLOYED IN A CONFIDENTIAL CAPACITY WITHIN THE MEANING OF SECTION 1(3)(A) OF THE ACT AND IS NOT AN EMPLOYEE FOR THE PURPOSES OF THE ACT.

11. THE RESPONDENT TOOK THE POSITION THAT THIS MATTER SHOULD HAVE BEEN DEALT WITH BY THE PARTIES IN AN ARBITRATION PROCEEDING. THE APPLICANT ARGUED THAT IT WAS ENTITLED TO THE RELIEF PROVIDED BY SECTION 79(2) OF THE ACT. THERE CAN BE NO DOUBT THAT THE APPLICANT IS ENTITLED TO THE BOARD'S DECISION ON THE QUESTION THAT HAS ARISEN. HOWEVER, IT WOULD APPEAR TO THE BOARD THAT THE BOARD'S FINDINGS AS SET OUT ABOVE ARE PRELIMINARY TO AN ARBITRATION PROCEEDING WITH RESPECT TO THE PERSONS FOUND BY THE BOARD TO BE EMPLOYEES FOR THE PURPOSES OF THE ACT IN ORDER THAT IT MAY BE DETERMINED WHETHER OR NOT SUCH PERSONS ARE INCLUDED IN THE BARGAINING UNIT REPRESENTED BY THE APPLICANT. HAVING REGARD TO THE DECISION OF THE BOARD IN INDUSTRIAL FOOD SERVICES DIVISION OF CANADA FOOD PRODUCTS SALES LIMITED CASE, (1962) CANADA LABOUR LAW CASES, 1960-1964, ¶16,228, THE BOARD IS OPINION THAT HAD THE MATTER GONE STRAIGHT TO ARBITRATION AND HAD THE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSE OF THE COLLECTIVE AGREEMENT, THE ARBITRATOR IN MAKING SUCH AN AWARD WOULD NOT HAVE INFRINGED ON THE BOARD'S JURISDICTION. IT IS RECOGNIZED THAT THE BOARD HAS EXCLUSIVE JURISDICTION TO DETERMINE WHETHER OR NOT A PERSON IS AN EMPLOYEE FOR THE PURPOSES OF THE ACT, HOWEVER, THE BOARD IS OF OPINION THAT SUCH A DETERMINATION IS NOT NECESSARILY THE SAME AS DETERMINING WHETHER A PERSON IS A PERSON INCLUDED IN A BARGAINING UNIT. WHILE A PERSON MAY BE AN EMPLOYEE FOR THE PURPOSES OF THE ACT HE MAY NOT BE AN EMPLOYEE INCLUDED IN A BARGAINING UNIT DESCRIBED BY A COLLECTIVE AGREEMENT. CONVERSELY, EVEN THOUGH THE BOARD MIGHT FIND THAT A CERTAIN PERSON IS NOT AN EMPLOYEE FOR THE PURPOSES OF THE ACT, SUCH PERSON MIGHT WELL HAVE BEEN INCLUDED IN A BARGAINING UNIT DEFINED BY A COLLECTIVE AGREEMENT ON THE AGREEMENT OF THE PARTIES. SINCE SUCH IS THE CASE IT WOULD APPEAR THAT THERE ARE MANY INSTANCES WHERE PARTIES TO DISPUTES SIMILAR TO THE INSTANT CASE, WOULD BENEFIT BY TAKING THE MATTER DIRECTLY TO ARBITRATION WHERE THERE IS A COLLECTIVE AGREEMENT IN OPERATION.

DECISION OF BOARD MEMBER D. B. ARCHER: (OCTOBER 27, 1966).

I AGREE WITH THE DECISION OF THE MAJORITY EXCEPT IN THE CASE OF MRS. J. WILLETS WHO IS A STENOGRAPHER IN THE PERSONNEL DEPARTMENT. THERE IS ANOTHER STENOGRAPHER IN THE PERSONNEL DEPARTMENT AND ANY CONFIDENTIAL MATERIAL CAN BE TYPED BY HER. I DO NOT BELIEVE A COMPANY SHOULD BE ALLOWED TO DOLE OUT CONFIDENTIAL WORK TO NUMEROUS PERSONS AND THEN CLAIM THAT THESE PERSONS ARE EXCLUDED UNDER THE HEADING OF HAVING CONFIDENTIAL INFORMATION IN MATTERS PERTAINING TO LABOUR RELATIONS. IN THIS MANNER AN OFFICE BARGAINING UNIT COULD BE COMPLETELY DECIMATED. I DO NOT BELIEVE MRS. WILLETS NEEDS TO DO ANY WORK THAT WOULD EXCLUDE HER FROM THE BARGAINING UNIT.

DECISION OF BOARD MEMBER F. W. MURRAY: (OCTOBER 27, 1966).

I DISSENT WITH RESPECT TO THAT PORTION OF THE MAJORITY DECISION DEALING WITH GOSLING AND BRINKMAN, AND WOULD HAVE FOUND THAT BOTH GOSLING AND BRINKMAN EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B), AND THEREFORE ARE NOT EMPLOYEES FOR THE PURPOSES OF THE ACT.

INDEXED ENDORSEMENTS - SECTION 79A

12010-66-M: FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL - CIO - CLC (TRADE UNION) V. SUNNYBROOK FOOD MARKET (EMPLOYER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND D. W. FORGIE.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., AND V. PATHE FOR THE TRADE UNION, AND N. L. MATHEWS, Q.C., JULIUS GOODBAUM AND MOTTLE GOODBAUM FOR THE EMPLOYER.

DECISION OF J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBER F. W. MURRAY: (OCTOBER 12, 1966).

1. THIS IS A REFERENCE TO THE BOARD BY THE MINISTER OF LABOUR PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT, OF THE QUESTION WHETHER THE TRADE UNION IS ENTITLED TO GIVE NOTICE OF DESIRE TO BARGAIN TO THE EMPLOYER PURSUANT TO SECTION 47A OF THE ACT.

2. THERE IS NO DISPUTE AS TO THE FACTS. THE CLAIM OF THE TRADE UNION RELATES TO THE BUSINESS CARRIED ON BY THE EMPLOYER AT CERTAIN STORE PREMISES AT WHITBY. A SIMILAR BUSINESS WAS PREVIOUSLY CARRIED ON BY STEINBERG'S LIMITED AT THE PREMISES IN QUESTION, AND IT IS ALLEGED BY THE TRADE UNION THAT STEINBERG'S LIMITED SOLD THAT BUSINESS TO THE PRESENT EMPLOYER, AND THAT THE TRADE UNION IS CONSEQUENTLY ENTITLED TO GIVE NOTICE TO BARGAIN TO THE EMPLOYER PURSUANT TO SECTION 47A OF THE ACT.

3. STEINBERG'S LIMITED OPERATED A RETAIL FOOD SUPERMARKET AT THE PREMISES IN QUESTION. THERE WAS A COLLECTIVE AGREEMENT IN EFFECT BETWEEN STEINBERG'S LIMITED AND THE TRADE UNION.

4. STEINBERG'S CEASED TO CONDUCT BUSINESS AT THE PREMISES IN QUESTION SHORTLY BEFORE THE END OF MARCH, 1966. AT THAT TIME, THERE WERE APPROXIMATELY 8 FULL-TIME AND 15 TO 20 PART-TIME EMPLOYEES. ON MAY 4TH, 1966, THE EMPLOYER, SUNNYBROOK FOOD MARKETS (KEELE) LIMITED, COMMENCED THE BUSINESS OF A RETAIL FOOD SUPERMARKET AT THE PREMISES. AT THE TIME OF THE HEARING IN THIS MATTER, THERE WERE 32 FULL-TIME AND 11 OR 12 PART-TIME EMPLOYEES. NONE OF THE PERSONS HIRED BY SUNNYBROOK HAD FORMERLY BEEN EMPLOYED BY STEINBERG'S AT THE PREMISES IN QUESTION.

5. AN AGREED STATEMENT OF FACTS WAS PRESENTED TO THE BOARD, SETTING OUT THE FOLLOWING FACTS. STEINBERG'S LIMITED OPERATE RETAIL FOOD SUPERMARKETS IN AJAX, TO THE WEST OF WHITBY, AND AT OSHAWA, TO THE EAST. THE OSHAWA STORE WAS OPENED AT APPROXIMATELY THE TIME THE WHITBY STORE WAS CLOSED, AND CERTAIN EMPLOYEES OF STEINBERG'S WERE TRANSFERRED FROM WHITBY TO OSHAWA. ABOUT FOUR OR FIVE MILES SEPARATES THE SUNNYBROOK STORE, AT WHITBY, FROM THE STEINBERG'S STORES IN EACH DIRECTION. STEINBERG'S AND SUNNYBROOK APPEAR TO COMPLETE WITH ANOTHER, AND EACH ADVERTISES IN THE COMMUNITY SERVED BY THE OTHER, THROUGH NEWSPAPER ADVERTISING. AT THE TIME STEINBERG'S CLOSED ITS WHITBY STORE AND

OPENED ITS OSHAWA STORE, THE MOVE WAS PROMINENTLY ADVERTISED IN THE WHITBY STORE AND CUSTOMERS URGED TO TAKE THEIR BUSINESS TO THE OSHAWA STORE.

6. BY AN AGREEMENT OF PURCHASE AND SALE, DATED FEBRUARY 11TH, 1966, STEINBERG'S LIMITED ACCEPTED AN OFFER BY SUNNYBROOK FOOD MARKETS (KEELE) LIMITED TO PURCHASE:-

ALL LEASEHOLD IMPROVEMENTS, CHATTELS, EQUIPMENT, FURNITURE, FIXTURES AND EFFECTS OF THE STEINBERG'S LIMITED FOOD AND GROCERY STORE OF THE VENDOR NOW CARRIED ON AT AND FROM THE PREMISES SITUATE AT AND MUNICIPALLY KNOWN AS 114 DUNDAS STREET EAST, IN THE TOWN OF WHITBY, AND ALL CONTENTS OF THE SAID PREMISES EXCEPT FOODSTUFFS AND IN ADDITION THE LAND ADJACENT TO THE BEFOREMENTIONED PREMISES BEING PARTS OF LOTS 21 AND 22, AND BEING LOCATED ON PERRY STREET, HAVING DIMENSIONS OF APPROXIMATELY 61.87 FEET BY 172.91 FEET FOR THE AGGREGATE PRICE OF [OMITTED] SUCH AGGREGATE PRICE TO BE BROKEN DOWN AND APPLIED AGAINST THE PURCHASE OF THE BUSINESS AND THE PURCHASE OF THE LAND IN A MANNER TO BE SUBSEQUENTLY PRESCRIBED BY THE VENDOR.

THE AGREEMENT PROVIDED, INTER ALIA, THAT THE PURCHASE PRICE DID NOT INCLUDE AN ALLOWANCE FOR GOODWILL; THAT "VACANT POSSESSION OF THE BUSINESS AND PREMISES" OF THE VENDOR WOULD BE GIVEN TO THE PURCHASER; AND THAT THE PURCHASER ASSUMED NO LIABILITY OR OBLIGATION INCURRED BY THE VENDOR IN CONNECTION WITH THE OPERATION OF THE BUSINESS. THE PURCHASER ACKNOWLEDGED HAVING FAMILIARIZED HIMSELF WITH ALL CIRCUMSTANCES RELATED TO OR CONNECTED WITH THE OPERATION OF THE VENDOR'S BUSINESS, INCLUDING THE "PRESENT WORKING CONDITIONS AND STATUS OF EMPLOYEES". THERE WAS NO RESTRICTIVE COVENANT GIVEN BY THE VENDOR. THE VENDOR FURTHER AGREED TO ASSIGN ITS LEASE OF THE STORE PREMISES TO THE PURCHASER.

7. IT IS THE CONTENTION OF COUNSEL FOR THE TRADE UNION THAT THE FACTS IN THIS CASE ARE NOT DISTINGUISHABLE FROM THOSE IN THE DUTCH BOY FOOD MARKETS CASE, BOARD FILE NO. 10220-65-M. IN THAT CASE THE BOARD HELD THAT A VERY SIMILAR SET OF TRANSACTIONS CONSTITUTED A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT. COUNSEL FOR THE EMPLOYER, HOWEVER, POINTS TO AN IMPORTANT DIFFERENCE BETWEEN THE DUTCH BOY CASE AND THE INSTANT CASE. IN THE DUTCH BOY CASE, THE BOARD CONCLUDED THAT THE EMPLOYER ACQUIRED NOT JUST THE ASSETS, BUT THE ENTIRE INTEREST OF THE PREDECESSOR: "IT PURCHASED STEINBERG'S ENTIRE OPERATION IN THE KITCHENER AREA". IN THE INSTANT CASE, THE "PREDECESSOR" EMPLOYER (STEINBERG'S) CONTINUES TO DO BUSINESS IN THE GENERAL MARKET AREA AND COMPETES WITH THE PURCHASER, SUNNYBROOK. IN OUR VIEW, THIS DISTINCTION BETWEEN THE TWO SETS OF CIRCUMSTANCES IS OF VITAL IMPORTANCE.

8. IN BOTH THE DUTCH BOY CASE AND THE INSTANT CASE, MUCH WAS MADE OF THE ABSENCE OF A SALE OF GOODWILL AND THE ABSENCE OF A RESTRICTIVE COVENANT. THE BOARD IN THE DUTCH BOY CASE CONCLUDED, AND WE WOULD WITH RESPECT AGREE, THAT THE ABSENCE OF THESE ITEMS DID NOT OF NECESSITY REQUIRE THE CONCLUSION THAT THERE HAD NOT BEEN A SALE OF A BUSINESS. SEE ALSO THE L & M FOOD MARKET CASE,

O.L.R.B. MONTHLY REPORT, SEPTEMBER 1965, P. 440. THE DETERMINATION OF THE QUESTION WHETHER THERE HAS BEEN A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A CAN ONLY BE MADE ON THE BASIS OF A CONSIDERATION OF ALL THE CIRCUMSTANCES OF ANY CASE. CLEARLY, AS THE BOARD INDICATED IN THE DUTCH BOY DECISION, THE VALUE OF "GOODWILL" MUST BE ASSESSED HAVING REGARD TO THE NATURE OF THE ENTERPRISE. WE WOULD ONLY ADD THAT THAT ASSESSMENT MUST BE MADE IN THE CONTEXT OF THE ENTIRE CIRCUMSTANCES SURROUNDING THE TRANSACTION. IN THE DUTCH BOY CASE, SINCE, AS THE BOARD FOUND, THE PREDECESSOR EMPLOYER, DISPOSED OF ITS ENTIRE OPERATION IN THE AREA, THE INCLUSION OR EXCLUSION OF THE ITEM "GOODWILL" MADE NO TANGIBLE DIFFERENCE, AND THE TRANSACTIONS WHICH TOOK PLACE CONSTITUTED A SALE OF THE BUSINESS, NOTWITHSTANDING THE ABSENCE OF ANY REFERENCE TO GOODWILL. IN THE INSTANT CASE, HOWEVER, THE ABSENCE OF ANY TRANSFER OF GOODWILL DOES HAVE SIGNIFICANCE, SINCE THE VENDOR HAS REMAINED IN BUSINESS IN THE SAME MARKET AREA, AS A COMPETITOR OF SUNNYBROOK, AND, INDEED, INVOKED THE "GOODWILL" OF ITS CUSTOMERS AT THE TIME OF ITS RELOCATION.

9. HAVING REGARD TO ALL OF THE CIRCUMSTANCES OF THE INSTANT CASE, WE CONCLUDE THAT THIS IS NOT A CASE (SUCH AS THE DUTCH BOY CASE WAS) IN WHICH ONE EMPLOYER GOES OUT OF BUSINESS AND ANOTHER, PURCHASING ALL THE SUBSTANTIAL ASSETS, OPENS FOR BUSINESS AT THE SAME PREMISES. RATHER, THIS IS A CASE IN WHICH AN EMPLOYER, CHANGING THE LOCATION OF ITS BUSINESS OPERATIONS WITHIN A PARTICULAR MARKET AREA, DISPOSES OF CERTAIN UNWANTED PREMISES AND OTHER ASSETS TO A COMPETITOR. IN ARRIVING AT THIS CONCLUSION, WE HAVE HAD REGARD, INTER ALIA, TO THE FACT THAT STEINBERG'S RETAINED THE SERVICES OF CERTAIN OF ITS EMPLOYEES, WHO WERE TRANSFERRED FROM WHITBY TO OSHAWA. THIS IS CONSISTENT WITH THE CONCLUSION THAT STEINBERG'S HAS NOT DISPOSED OF ITS BUSINESS IN THE MARKET AREA IN QUESTION. WE WOULD AGREE WITH THE VIEW EXPRESSED BY THE MAJORITY OF THE BOARD IN THE DUTCH BOY CASE THAT THE DIFFERENCES OR SIMILARITIES IN EMPLOYMENT FORCES AS BETWEEN "PREDECESSOR" AND "SUCCESSOR" EMPLOYERS WOULD NOT OTHERWISE BE RELEVANT TO THE ISSUE.

10. HAVING REGARD TO THE FOREGOING, IT IS OUR CONCLUSION THAT THERE HAS NOT BEEN A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE ACT. THE TRADE UNION, ACCORDINGLY, IS NOT ENTITLED TO GIVE NOTICE OF DESIRE TO BARGAIN TO THE EMPLOYER PURSUANT TO THE PROVISIONS OF SECTION 47A OF THE ACT.

11. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER OF LABOUR IS "NO".

DECISION OF BOARD MEMBER D. W. FORGIE: (OCTOBER 12, 1966).

I DISSENT.

IN THE DUTCH BOY FOOD MARKETS CASE, BOARD FILE No. 10220-65-M, THE BOARD HELD THAT A VERY SIMILAR SET OF CIRCUMSTANCES, AS IN THE INSTANT CASE, CONSTITUTED A SALE OF BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE ONTARIO LABOUR RELATIONS ACT, AND FURTHER CONCLUDED THAT THE EMPLOYER (KITCHENER FOOD MARKET LIMITED) PURCHASED STEINBERG'S ENTIRE OPERATION IN THE KITCHENER AREA.

IN THE PRESENT CASE THE MAJORITY CONCLUDED, AND IT WAS AN ASSUMPTION NOT EVIDENCED SPECIFICALLY IN FACT, THAT THE "PREDECESSOR" EMPLOYER (STEINBERG'S) CONTINUES TO DO BUSINESS IN THE GENERAL MARKET AREA AND COMPETES WITH THE PURCHASER SUNNYBROOK. IT PRESUMABLY CONCLUDED THAT THIS DISTINCTION OF GEOGRAPHY AND COMPETITION IS OF VITAL IMPORTANCE. THE EMPLOYER (SUNNYBROOK FOOD MARKET) PURCHASED STEINBERG'S OPERATION IN WHITBY ONLY, A SPECIFIC COMMUNITY AND SPECIFIC MARKET AREA, AND IT IS IMPOSSIBLE TO CONCUR WITH THE MAJORITY, ASSESSING THE REALITIES OF THIS TYPE OF BUSINESS, THAT TWO FIRMS FOUR TO FIVE MILES APART IN DIFFERENT MUNICIPALITIES, IN HIGHLY POPULATED AREAS, SERIOUSLY, IF AT ALL, COMPETE WITH EACH OTHER. IT IS SUGGESTED THAT THE "VALUE OF 'GOODWILL' MUST BE ASSESSED HAVING REGARD TO THE NATURE OF THE ENTERPRISE". GOODWILL, HOWEVER, IS A NEBULOUS UNSUBSTANTIAL COMMODITY, IMPOSSIBLE TO EVALUATE AND IT MUST BE RECOGNIZED AS A REALITY "HAVING REGARD TO THE NATURE OF THE ENTERPRISE" THAT GOODWILL OR CLIENT ALLEGIANCE DOES NOT EXIST, AND PURCHASING IS PRIMARILY A QUESTION OF GEOGRAPHY, CONVENIENCE AND AVAILABILITY OF IDENTICAL OR LIKE PRODUCTS. ASSUMING THAT GOODWILL CAN BE SOLD, SECTION 47A (1)(A) STATES "'BUSINESS' INCLUDES A PART OR PARTS THEREOF", AND IT THEREFORE DOES NOT REQUIRE THE SALE OF GOODWILL TO ANSWER THE REQUIREMENTS OF A SALE OF A BUSINESS WITHIN THE MEANING OF THE ACT.

HAVING REGARD TO ALL THE CIRCUMSTANCES OF THE INSTANT CASE, I CONCLUDE THAT THIS IS A CASE (SUCH AS DUTCH BOY WAS) IN WHICH ONE EMPLOYER GOES OUT OF BUSINESS AND ANOTHER, PURCHASING ALL THE SUBSTANTIAL ASSETS, OPENS FOR BUSINESS AT THE SAME PREMISES.

THE MAJORITY HELD FURTHER THAT BECAUSE STEINBERG'S RETAINED THE SERVICES OF CERTAIN OF ITS EMPLOYEES IT HAS NOT DISPOSED OF ITS BUSINESS IN THE MARKET AREA IN QUESTION. I CANNOT AGREE THAT IT REQUIRES THE SALE OF EMPLOYEES AS WELL IN ORDER TO CONSTITUTE THE SALE OF A BUSINESS. THE PURCHASER (SUNNYBROOK) ACKNOWLEDGED HAVING FAMILIARIZED ITSELF WITH ALL CIRCUMSTANCES RELATED TO OR CONNECTED WITH THE OPERATION OF THE VENDOR'S (STEINBERG'S) BUSINESS, INCLUDING THE "WORKING CONDITIONS AND STATUS OF EMPLOYEES".

IT IS THEREFORE MY CONCLUSION THAT THERE HAS BEEN A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE ACT AND I WOULD FIND THAT THE TRADE UNION, ACCORDINGLY, IS ENTITLED TO GIVE NOTICE OF DESIRE TO BARGAIN TO THE EMPLOYER PURSUANT TO THE PROVISIONS OF SECTION 47A OF THE ACT.

THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER OF LABOUR, IN MY VIEW, IS "YES".

12149-66-M: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1758 (TRADE UNION) v. DICK VANDENBELT, GENERAL CONTRACTOR (EMPLOYER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: ALBERT LALONDE FOR THE TRADE UNION, AND DICK VANDENBELT FOR THE EMPLOYER.

DECISION OF THE BOARD: (OCTOBER 4, 1966).

1. THIS IS A REFERENCE TO THE BOARD BY THE MINISTER OF LABOUR, PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT, OF THE QUESTION WHETHER THE TRADE UNION CONTINUES TO BE BARGAINING AGENT FOR THE EMPLOYEES OF THE EMPLOYER IN THE BARGAINING UNIT DESCRIBED IN THE BOARD'S CERTIFICATE, DATED JUNE 12TH, 1963.

2. ON JUNE 12TH, 1963, THE TRADE UNION WAS CERTIFIED BY THE BOARD AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE EMPLOYER. AT THAT TIME THE EMPLOYER WAS A BANKRUPT, HAVING MADE AN ASSIGNMENT IN BANKRUPTCY ON JUNE 7TH, 1963. IT APPEARS THAT THE EMPLOYER DID NOT CARRY ON BUSINESS FOLLOWING HIS BANKRUPTCY UNTIL MARCH 1965, ALTHOUGH HE RECEIVED HIS DISCHARGE IN BANKRUPTCY ON SEPTEMBER 24TH, 1964. THE TRADE UNION DID NOT SEEK TO BARGAIN WITH THE EMPLOYER UNTIL THE SPRING OF 1966, ALTHOUGH THE REPRESENTATIVE OF THE UNION EXPLAINED, AT THE HEARING, THAT THIS WAS BECAUSE OF THE BANKRUPTCY OF THE EMPLOYER, AND THE SMALL NUMBER OF EMPLOYEES HIRED AFTER THE EMPLOYER DID BEGIN TO CARRY ON BUSINESS AGAIN.

3. IN THESE CIRCUMSTANCES, IT COULD NOT BE SAID THAT THE TRADE UNION HAS ABANDONED ITS BARGAINING RIGHTS. THE EMPLOYER, HOWEVER, ARGUES THAT, BY VIRTUE OF HIS DISCHARGE IN BANKRUPTCY, HE IS NO LONGER BOUND BY THE BOARD'S CERTIFICATE.

4. THE BANKRUPTCY ACT, R.S.C. 1952, c. 11, s. 135, AFTER SETTING OUT THE DEBTS FROM WHICH A BANKRUPT IS NOT RELEASED BY AN ORDER OF DISCHARGE (NONE OF WHICH IS HERE MATERIAL), PROVIDES THAT "AN ORDER OF DISCHARGE RELEASES THE BANKRUPT FROM ALL OTHER CLAIMS PROVABLE IN BANKRUPTCY". THE OBLIGATION TO BARGAIN WHICH IS CREATED BY VIRTUE OF THE ISSUANCE OF THE BOARD'S CERTIFICATE DOES NOT CREATE ANY CLAIM PROVABLE IN BANKRUPTCY. THE FACT THAT THE TRADE UNION HOLDS BARGAINING RIGHTS WITH RESPECT TO A UNIT OF EMPLOYEES OF THE EMPLOYER DOES NOT SIGNIFY THAT THE TRADE UNION IS IN ANY SENSE THE CREDITOR OF THE EMPLOYER. THE BARGAINING RIGHTS HELD BY THE TRADE UNION ARE NOT AFFECTED BY THE ORDER OF DISCHARGE AS SUCH.

5. IT SHOULD BE NOTED THAT NOTHING IN THIS DECISION DEALS WITH THE QUESTION WHETHER A TRADE UNION, ENTITLED TO BARGAIN WITH AN EMPLOYER WITH RESPECT TO A UNIT OF HIS EMPLOYEES, WOULD BE ENTITLED TO BARGAIN WITH A TRUSTEE IN BANKRUPTCY WHERE, ON THE EMPLOYER'S BANKRUPTCY, THE TRUSTEE CARRIES ON THE BUSINESS, NOR DOES IT DEAL WITH ANY OF THE RELATED QUESTIONS WHICH MIGHT ARISE IN THIS AREA.

6. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER OF LABOUR IS "YES".

12194-66-M: THE OTTAWA CITIZEN, A DIVISION OF THE SOUTHAM COMPANY LIMITED (EMPLOYER) v. THE OTTAWA PRINTING CRAFTS UNION, AN AFFILIATE OF THE NATIONAL COUNCIL OF CANADIAN LABOUR (TRADE UNION).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: C. A. MORLEY AND S. G. ROBERTS FOR THE EMPLOYER, AND J. PAUL LEMIEUX, JOHN MAGEE AND STEWART STRUTT FOR THE TRADE UNION.

DECISION OF THE BOARD: (OCTOBER 12, 1966).

1. THIS IS A REFERENCE TO THE BOARD BY THE MINISTER OF LABOUR, PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT, OF THE QUESTION WHETHER THE TRADE UNION IS ENTITLED TO CONCILIATION SERVICES, HAVING REGARD TO THE PROVISIONS OF ARTICLE 13 OF THE COLLECTIVE AGREEMENT WHICH HAS BEEN IN EFFECT BETWEEN THE PARTIES.

2. THE TRADE UNION IS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE EMPLOYER AND HAS BEEN PARTY TO A COLLECTIVE AGREEMENT WITH THE EMPLOYER. THE PARTIES HAVE RECENTLY BEEN NEGOTIATING WITH RESPECT TO AMENDMENTS TO THIS AGREEMENT, NOTICE HAVING BEEN GIVEN IN COMPLIANCE WITH SECTION 40 OF THE LABOUR RELATIONS ACT. THE TRADE UNION HAS APPLIED TO THE MINISTER OF LABOUR FOR THE APPOINTMENT OF A CONCILIATION OFFICER. SECTION 13(1) OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:-

WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 11 OR 40, THE MINISTER, UPON THE REQUEST OF EITHER PARTY, SHALL APPOINT A CONCILIATION OFFICER TO CONFER WITH THE PARTIES AND ENDEAVOUR TO EFFECT A COLLECTIVE AGREEMENT.

3. THE EMPLOYER OBJECTS TO THE APPOINTMENT OF A CONCILIATION OFFICER, ON THE GROUNDS THAT THE TRADE UNION IS NOT ENTITLED TO MAKE THE "REQUEST" REFERRED TO IN SECTION 13, AND THAT THE PARTIES ARE BOUND BY CERTAIN PROVISIONS IN THE COLLECTIVE AGREEMENT REQUIRING THE MATTERS IN QUESTION TO BE RESOLVED BY ARBITRATION WITHOUT RESORT TO THE CONCILIATION PROCEDURE. THE EMPLOYER RELIES ON ARTICLE 13 OF THE COLLECTIVE AGREEMENT:-

RENEWAL

IF, PRIOR TO THE TERMINATION OF THIS AGREEMENT, EITHER PARTY HERETO WISHES TO PROPOSE AN AMENDMENT, TO THIS AGREEMENT AND A NEW AGREEMENT TO TAKE THE PLACE OF THIS ONE UPON THE EXPIRATION DATE, IT SHALL NOTIFY THE OTHER PARTY IN WRITING OF ITS WISHES SIXTY (60) DAYS PRIOR TO ITS EXPIRATION DATE AND FORWARD THE STATEMENT IN DETAIL OF THE CHANGES DESIRED WITHIN FIFTEEN (15) DAYS OF SAID NOTIFICATION. THE RESPONDENT PARTY MAY, WITHIN THIRTY (30) DAYS OF RECEIPT OF SUCH STATEMENT IN DETAIL FORMULATE A COUNTER PROPOSAL, OR, IF NO COUNTER PROPOSAL BE FILED, THE EXISTING AGREEMENT SHALL BE CONSIDERED TO BE THE COUNTER PROPOSAL. IF NOTICE IS NOT GIVEN BY ONE OF THE PARTIES, AS ABOVE DESCRIBED, IT SHALL BE CONSTRUED AS A RENEWAL OF THIS AGREEMENT FOR ONE YEAR AND THE

AGREEMENT SHALL THEREAFTER BE AUTOMATICALLY RENEWED FOR ONE YEAR UNTIL OPEN FOR NEGOTIATIONS BY THE PROCEDURE ABOVE MENTIONED. IF NEGOTIATIONS FAIL TO RESULT IN A MUTUAL SATISFACTORY SETTLEMENT, THE MATTER SHALL BE REFERRED TO ARBITRATION AS SPECIFIED IN ARTICLE 12.

4. AFTER NOTICE WAS GIVEN AND NEGOTIATIONS BETWEEN THE PARTIES HAD TAKEN PLACE, THE EMPLOYER SOUGHT TO REFER THE MATTER TO ARBITRATION AS PROVIDED FOR IN THE COLLECTIVE AGREEMENT. LATER, THE TRADE UNION APPLIED TO THE MINISTER FOR THE APPOINTMENT OF A CONCILIATION OFFICER. THE EMPLOYER ARGUES THAT, IN THESE CIRCUMSTANCES, THE PROCEDURE PROVIDED FOR IN THE COLLECTIVE AGREEMENT MUST BE FOLLOWED TO ITS CONCLUSION IN PREFERENCE TO AND TO THE EXCLUSION OF CONCILIATION.

5. THE PROVISION FOR ARBITRATION OF "CONTRACT NEGOTIATION DISPUTES", WHILE UNUSUAL, DOES NOT IN ITSELF APPEAR TO BE CONTRARY TO THE LABOUR RELATIONS ACT. IN CERTAIN INDUSTRIES, OF COURSE, ARBITRATION OF SUCH DISPUTES HAS BEEN MADE COMPULSORY BY LEGISLATION. IT WAS CONCEDED ON BEHALF OF THE TRADE UNION THAT, UNDER THE COLLECTIVE AGREEMENT, ARBITRATION OF SUCH DISPUTES WAS THE ONLY FINAL RESORT: THE AWARD OF THE ARBITRATOR WOULD BE FINAL AND BINDING, AND THE UNION WOULD NOT HAVE THE RIGHT TO STRIKE. THE BOARD MAKES NO DETERMINATION WITH RESPECT TO THESE MATTERS; WE SIMPLY RECORD THE POSITIONS TAKEN BY THE PARTIES.

6. THE COLLECTIVE AGREEMENT DOES NOT IN TERMS PURPORT TO LIMIT THE AUTHORITY OF THE MINISTER TO APPOINT A CONCILIATION OFFICER. IT MAY WELL BE THAT ANY SUCH PROVISION COULD NOT STAND AGAINST THE PROVISION OF THE ACT THAT THE MINISTER "SHALL" APPOINT A CONCILIATION OFFICER IN SUCH CASES. WE CANNOT ACCEPT THE ARGUMENT OF COUNSEL FOR THE EMPLOYER THAT SECTION 13 DOES NOT APPLY BECAUSE THE TRADE UNION IS NOT ENTITLED TO MAKE THE "REQUEST" REFERRED TO IN THE ACT. NEITHER THE PROVISIONS OF THE COLLECTIVE AGREEMENT NOR THE CONDUCT OF THE PARTIES CREATES ANY ESTOPPEL WHICH WOULD PREVENT THE PARTIES FROM MAKING USE OF THE PROVISIONS OF THE ACT. THE ONLY PREREQUISITE TO THE MAKING OF A REQUEST APPEARS TO BE THE GIVING OF NOTICE, AND NO QUESTION AS TO THAT ARISES IN THIS CASE.

7. IT IS NOT A NECESSARY IMPLICATION OF THE COLLECTIVE AGREEMENT THAT CONCILIATION SERVICES MAY NOT BE GRANTED, NOR IS IT A NECESSARY IMPLICATION OF A RESORT TO ARBITRATION THAT CONCILIATION SERVICES SHOULD NOT BE GRANTED. THE AGREEMENT CONTEMPLATES "NEGOTIATIONS" BETWEEN THE PARTIES, AND THE PURPOSE OF CONCILIATION SERVICES, OF COURSE, IS TO ASSIST THE PARTIES IN THEIR NEGOTIATIONS. THE FACT, THEN, THAT THE ARBITRATION PROVISIONS HAVE ALREADY BEEN INVOKED, DOES NOT REQUIRE THE CONCLUSION THAT CONCILIATION SERVICES SHOULD NOT BE GRANTED.

8. IN THE RESULT, IT IS OUR CONCLUSION THAT THE COLLECTIVE AGREEMENT DOES NOT IN TERMS OR BY NECESSARY IMPLICATION CONFLICT WITH THE PROVISIONS OF SECTION 13 OF THE LABOUR RELATIONS ACT. IN OUR OPINION, THE MINISTER DOES HAVE AUTHORITY TO APPOINT A CONCILIATION OFFICER.

9. IT MAY BE NOTED THAT THE EMPLOYER HAS REQUESTED THE MINISTER OF LABOUR TO APPOINT A NOMINEE FOR THE UNION TO THE BOARD OF ARBITRATION SOUGHT TO BE ESTABLISHED PURSUANT TO THE COLLECTIVE AGREEMENT. NOTHING IN THIS DECISION SHOULD BE TAKEN AS SUGGESTING ANY LIMITATIONS UPON THE AUTHORITY OF THE MINISTER TO MAKE SUCH APPOINTMENT OR ANY LIMITATION UPON THE JURISDICTION OF SUCH BOARD WHEN ESTABLISHED.

10. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER OF LABOUR IS "YES".

12195-66-M: DRYDEN 5¢ TO \$1.00 STORE LIMITED (EMPLOYER) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION (TRADE UNION).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS D. ALAN PAGE AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: WARREN K. WINKLER AND E. V. CADARIO FOR THE EMPLOYER, AND CLIFFORD EVANS FOR THE TRADE UNION.

DECISION OF THE BOARD: (OCTOBER 20, 1966).

1. THIS IS A REFERENCE TO THE BOARD BY THE MINISTER OF LABOUR, PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT, OF THE QUESTION WHETHER THE TRADE UNION HAS GIVEN PROPER NOTICE TO THE EMPLOYER PURSUANT TO SECTION 40 OF THE LABOUR RELATIONS ACT.

2. THERE HAS BEEN A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE EMPLOYER AND THE TRADE UNION. THE TRADE UNION SUBMITS THAT A LETTER DATED JULY 4TH, 1966, (EXHIBIT 1), ADDRESSED TO "MR. E. V. CADARIO, CADARIO'S DEPARTMENT STORE", OR, ALTERNATIVELY, A LETTER DATED JULY 5TH, 1966, (EXHIBIT 2), ADDRESSED TO "MRS. M. H. CADARIO, PRESIDENT, DRYDEN 5¢ TO \$1.00 STORE LIMITED", CONSTITUTES PROPER NOTICE TO THE EMPLOYER PURSUANT TO SECTION 40 OF THE ACT. NO ISSUE IS RAISED WITH RESPECT TO THE DESCRIPTION OF THE ADDRESSEE. MR. E. V. CADARIO APPEARS TO BE AN OFFICER OF THE EMPLOYER, AND MRS. M. H. CADARIO IS ADDRESSED IN HER CAPACITY AS PRESIDENT OF THE EMPLOYER.

3. COUNSEL FOR THE EMPLOYER, HOWEVER, RAISES THE OBJECTION THAT NEITHER EXHIBIT 1 NOR EXHIBIT 2 CONSTITUTES NOTICE BY THE TRADE UNION. THE LETTER IN EACH CASE IS ON THE LETTERHEAD OF THE RETAIL STORE EMPLOYEES UNION LOCAL NO. 832, WHICH, SO THE LETTERHEAD INDICATES, IS A CHARTERED LOCAL OF THE RETAIL CLERKS' INTERNATIONAL ASSOCIATION. EXHIBIT 1 BEARS THE REFERENCE "RE: NEGOTIATIONS BETWEEN CADARIO'S DEPARTMENT STORE AND RETAIL CLERKS INTERNATIONAL ASSOCIATION". EXHIBIT 2 BEARS THE REFERENCE "RE: NEGOTIATIONS BETWEEN: DRYDEN 5¢ TO \$1.00 STORE LIMITED AND RETAIL CLERKS INTERNATIONAL ASSOCIATION". THE FIRST PARAGRAPH OF THE LETTER IN EACH CASE READS:-

WE ARE HEREBY NOTIFYING YOU THAT WE ARE DESIROUS TO NEGOTIATE AMENDMENTS TO THE EXISTING AGREEMENT BETWEEN YOUR COMPANY AND THE RETAIL CLERKS INTERNATIONAL ASSOCIATION, WITH THE VIEW TO REACH AN AGREEMENT.

BOTH LETTERS BEAR THE SIGNATURE OF "B. CHRISTOPHE", DESCRIBED AS "BERNARD CHRISTOPHE, SECRETARY-TREASURER & CHIEF EXECUTIVE OFFICER". THE DESCRIPTION APPEARS TO REFER TO MR. CHRISTOPHE'S OFFICE IN LOCAL 832 OF THE RETAIL STORE EMPLOYEES UNION. MR. CHRISTOPHE IS AS WELL A SPECIAL REPRESENTATIVE OF THE RETAIL CLERKS' INTERNATIONAL ASSOCIATION, ALTHOUGH THERE IS NO EVIDENCE THAT THIS FACT WAS BROUGHT TO THE ATTENTION OF THE EMPLOYER.

4. BY LETTER DATED JULY 15TH, 1966, (EXHIBIT 3), E. V. CADARIO MADE ARRANGEMENTS FOR A MEETING WITH A MR. ROY MCINTYRE OF THE "RETAIL CLERKS UNION". THIS LETTER WAS ON THE LETTERHEAD OF "DRYDEN 5¢ TO \$1.00 STORE LIMITED". ON THE UPPER LEFT HAND CORNER OF THE LETTERHEAD APPEARS A LARGE LETTER "C" AND WITHIN IT, THE NAME "CADARIO'S". BY LETTER DATED JULY 22ND, 1966, (EXHIBIT 4), ADDRESSED AGAIN TO MR. MCINTYRE OF THE "RETAIL CLERKS UNION", MR. CADARIO CANCELLED THE MEETING AND INDICATED ARRANGEMENTS WOULD BE MADE FOR ANOTHER. FINALLY, ON AUGUST 2ND, 1966, MRS. M. H. CADARIO WROTE TO "RETAIL STORE EMPLOYEES UNION LOCAL No. 832", TO THE ATTENTION OF MR. BERNARD CHRISTOPHE, (EXHIBIT 5). THIS LETTER AGAIN WAS ON THE LETTERHEAD OF "DRYDEN 5¢ TO \$1.00 STORE LIMITED". IN THE LETTER MRS. CADARIO INDICATED THAT THE EMPLOYER WAS BOUND BY A COLLECTIVE AGREEMENT WITH THE "RETAIL CLERKS INTERNATIONAL ASSOCIATION", AND THAT THIS PREVENTED THE EMPLOYER FROM NEGOTIATING WITH THE "RETAIL STORE EMPLOYEES UNION, LOCAL No. 832". THIS IS THE ARGUMENT NOW ADVANCED BY COUNSEL FOR THE EMPLOYER.

5. THE POSITION WHICH IS TAKEN ON BEHALF OF THE EMPLOYER IS NOT, IN OUR OPINION, WELL FOUNDED. IT IS CLEAR, OF COURSE, THAT THE "RETAIL STORE EMPLOYEES UNION, LOCAL No. 832" WAS NOT ENTITLED TO GIVE NOTICE TO BARGAIN TO THE EMPLOYER. IT IS NOT THE CASE, HOWEVER, THAT THAT ORGANIZATION PURPORTED TO GIVE SUCH NOTICE. IT IS APPARENT FROM THE EMPLOYER'S LETTER OF AUGUST 2ND (EXHIBIT 5), THAT, ALTHOUGH THE EMPLOYER HAD PREVIOUSLY RESPONDED TO THE NOTICE GIVEN BY EXHIBITS 1 AND 2, IT HAD SUBSEQUENTLY DETERMINED TO TREAT THOSE LETTERS AS THOUGH THEY PURPORTED TO BE NOTICES TO BARGAIN ON BEHALF OF LOCAL No. 832. THIS WAS NOT, IN OUR OPINION, A REASONABLE INTERPRETATION OF EXHIBITS 1 AND 2.

6. THE USE OF THE LETTERHEAD OF THE "RETAIL STORE EMPLOYEES UNION" DOES NOT, IN THE CIRCUMSTANCES, LEAD TO THE CONCLUSION THAT THE LETTER ITSELF PURPORTED TO BE A NOTICE ON BEHALF OF THAT ORGANIZATION. THE LETTER VERY CLEARLY MAKES REFERENCE TO THE EMPLOYER AND TO THE TRADE UNION, THE RETAIL CLERKS INTERNATIONAL ASSOCIATION. THE BODY OF THE LETTER SETS OUT UNEQUIVOCALLY THAT NEGOTIATIONS ARE DESIRED WITH RESPECT TO THE COLLECTIVE AGREEMENT BETWEEN THE EMPLOYER AND RETAIL CLERKS INTERNATIONAL ASSOCIATION, THE BARGAINING AGENT WHICH WAS ENTITLED TO GIVE SUCH NOTICE. THE LETTER WAS IN FACT SENT BY A REPRESENTATIVE OF THE TRADE UNION, AND NO QUESTION WAS RAISED AS TO HIS AUTHORITY TO ACT. THE BOARD HAS NO HESITATION IN CONCLUDING THAT THESE LETTERS, AND IN PARTICULAR EXHIBIT 2, CONSTITUTED NOTICE TO THE EMPLOYER PURSUANT TO SECTION 40 OF THE ACT.

7. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER OF LABOUR IS "YES".

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION

11798-66-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS
(APPLICANT) v. KENORA MOTOR PRODUCTS LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND
P. J. O'KEEFE.

DECISION OF THE BOARD: (OCTOBER 14, 1966).

1. THE APPLICANT HAS REQUESTED THE BOARD TO REVIEW ITS DECISION OF AUGUST 11TH, 1966 IN THIS MATTER.
2. FOLLOWING THE APPOINTMENT OF THE EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT, THE APPLICANT AND THE RESPONDENT AGREED TO THE DESCRIPTION OF THE BARGAINING UNIT AND THE BOARD IN ITS DECISION OF AUGUST 11TH, 1966 IN THIS MATTER NOTED THE AGREEMENT OF THE PARTIES THAT "ALL GARAGE EMPLOYEES OF THE RESPONDENT AT KENORA" WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT CONSTITUTED A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
3. THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES THAT SEVEN NAMED EMPLOYEES OF THE RESPONDENT WERE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.
4. THE EXAMINER'S REPORT CONTAINED NO FURTHER CLARIFICATION OF THE AGREEMENT ENTERED INTO BETWEEN THE PARTIES.
5. SINCE THE SEVEN EMPLOYEES WHOM THE PARTIES AGREED IN THE UNIT DIFFERED FROM THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS MATTER, THE APPLICANT'S MEMBERSHIP POSITION WAS CALCULATED WITH RESPECT TO THE SEVEN EMPLOYEES. THE BOARD HAD NO NOTICE THAT ANY OTHER EMPLOYEES WERE IN THE BARGAINING UNIT AND ASSUMED THAT THE SEVEN EMPLOYEES WERE ALL THE EMPLOYEES IN THE UNIT AT THE TIME THE APPLICATION WAS MADE. WHILE THE APPLICANT FILED THREE MEMBERSHIP CARDS FOR PERSONS WHOSE NAMES DID NOT APPEAR EITHER ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT PRIOR TO THE APPLICATION OR ON THE LIST OF THE SEVEN EMPLOYEES CONTAINED IN THE EXAMINER'S REPORT, WHEN THE APPLICANT WAS ADVISED AT THE HEARING THAT THERE WERE THREE "LOST" CARDS, THE APPLICANT DID NOT CHALLENGE THE LIST OF EMPLOYEES FILED BY THE RESPONDENT.
6. THE APPLICANT BY ITS LETTER OF OCTOBER 11TH, 1966 HAS REQUESTED THE BOARD TO DETERMINE WHETHER EMPLOYEES OF THE RESPONDENT, EMPLOYED IN ITS BODY SHOP LOCATED AT THE REAR OF ITS SERVICE STATION WHICH IS AT A SEPARATE LOCATION FROM ITS GARAGE IN KENORA, ARE INCLUDED IN THE BARGAINING UNIT TO WHICH THE PARTIES HAVE AGREED.
7. IF THE BOARD HAD DETERMINED THE COMPOSITION OF THE BARGAINING UNIT IN THIS MATTER ON ALL THE EVIDENCE WITHOUT TAKING INTO CONSIDERATION THE AGREEMENT OF THE PARTIES, IT MAY HAVE BEEN THAT THE BODY SHOP EMPLOYEES WOULD HAVE BEEN INCLUDED IN SUCH BARGAINING UNIT AS WELL AS CERTAIN SERVICE STATION EMPLOYEES

WHOM THE PARTIES BY LETTER FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER ALSO AGREED TO BE EXCLUDED. HOWEVER, THE BOARD'S DETERMINATION OF THE BARGAINING UNIT WAS BASED UPON THE AGREEMENT OF THE PARTIES AND SINCE SUCH AGREEMENT IS RESTRICTED TO "GARAGE EMPLOYEES" THE BOARD CAN ONLY ASSUME THAT ANY OTHER EMPLOYEES OF THE RESPONDENT ARE NOT TO BE INCLUDED IN THE BARGAINING UNIT.

8. IN ADDITION, SINCE THE AGREEMENT SPECIFICALLY REFERRED TO SEVEN EMPLOYEES WHO WERE INCLUDED IN THE BARGAINING UNIT, IT WOULD BE REASONABLE TO ASSUME THAT AT THE TIME THE APPLICATION WAS MADE ONLY THE SEVEN EMPLOYEES WERE "GARAGE EMPLOYEES" OF THE RESPONDENT. HAVING REGARD TO ALL THE FACTS, THE BOARD IS UNABLE TO DETERMINE THE EXACT NATURE OF THE AGREEMENT OF THE PARTIES IF IT IS OTHER THAN AS SET OUT ABOVE.

9. WHEN PARTIES ENTER INTO VOLUNTARY AGREEMENTS WITH RESPECT TO BARGAINING UNITS AND THE EXCLUSION AND INCLUSION OF PERSONS IN SUCH UNITS, THE RESPONSIBILITY FOR CLARIFYING THE NATURE AND EXTENT OF THE AGREEMENT RESTS SOLELY WITH THE PARTIES AND THE BOARD HAVING ONCE ACTED ON THE AGREEMENT OF THE PARTIES IS NOT IN A POSITION TO VARY OR REVOKE SUCH AGREEMENT.

10. THE APPLICANT'S REQUEST FOR A REVIEW OF THE BOARD'S DECISION OF AUGUST 11TH, 1966 IN THIS MATTER IS THEREFORE DENIED.

12165-66-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. T. ZELMER CONSTRUCTION CO. LTD. (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN AND BOARD MEMBERS R. W. TEAGLE AND D. W. FORGIE.

DECISION OF THE BOARD: (OCTOBER 14, 1966).

1. FOLLOWING THE RELEASE OF THE BOARD'S DECISION IN THIS MATTER, DATED OCTOBER 4, 1966, THE RESPONDENT, BY LETTER, REQUESTED THE BOARD TO GIVE "EXCERPTS" OF THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT TRADE UNION. WE ARE NOT CERTAIN JUST WHAT THE RESPONDENT MEANS BY "EXCERPTS" BUT IT IS POINTED OUT THAT PARAGRAPH 3 OF THE DECISION CONTAINS A SUMMARY OF THE FACTS PERTAINING TO THE MEMBERSHIP EVIDENCE IN QUESTION. IF WHAT THE RESPONDENT IS SEEKING IS THE IDENTITY OF THE UNION MEMBERS THEN ITS ATTENTION IS DIRECTED TO SECTION 83 OF THE LABOUR RELATIONS ACT.

2. THE REFERENCE IN THE SAID LETTER TO "55% OF THE EMPLOYEES AT THE DATE OF THE HEARING" IS ALSO CONFUSING. THE BOARD IS CONCERNED WITH THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION. SEE SECTION 7(1) OF THE LABOUR RELATIONS ACT. WITH RESPECT TO MEMBERSHIP, THE CRUCIAL DATE IS THE TERMINAL DATE SET FOR THE APPLICATION. SEE SECTIONS 77(2)(J) AND SECTION 7(1) OF THE ACT AND SECTION 50 (SECTION 48 AS OF SEPTEMBER 1, 1966) OF THE BOARD'S RULES OF PROCEDURE. THE MEMBERSHIP EVIDENCE IN THIS CASE IS ALL DATED AUGUST 23, 1966, TWO DAYS PRIOR TO THE DATE OF THE MAKING OF THE APPLICATION, NAMELY AUGUST 25, 1966. IT SHOULD PERHAPS BE POINTED OUT THAT

THE MEMBERSHIP POSITION OF AN APPLICANT UNDER SECTION 7 OF THE ACT IS NOT AFFECTED BY EMPLOYEES LEAVING THE EMPLOY OF AN EMPLOYER FOLLOWING THE DATE OF THE MAKING OF THE APPLICATION PROVIDING THEY WERE WORKING ON THAT DATE.

3. THE RESPONDENT ALSO REQUESTS LEAVE TO FILE FURTHER EVIDENCE RESPECTING THE NUMBER OF EMPLOYEES AT THE JOB SITE ON AUGUST 13, 1966. PRESUMABLY THE DATE, AUGUST 13, IS IN ERROR BECAUSE, AS IS POINTED OUT ABOVE, THE APPLICATION WAS FILED ON AUGUST 25. IN ITS DECISION, DATED OCTOBER 4, THE BOARD SAID IN PART:

ALTHOUGH THIS MATTER WOULD NORMALLY HAVE COME TO THE BOARD FOR DISPOSITION ON SEPTEMBER 7, 1966, THE DAY FOLLOWING THE TERMINAL DATE SET FOR THE APPLICATION, IT WAS HELD IN ABEYANCE UNTIL SEPTEMBER 22, 1966 IN ORDER TO GIVE EXTRA TIME TO THE RESPONDENT TO MAKE REPRESENTATIONS ...

THIS WAS DONE BECAUSE ALTHOUGH NO REQUEST WAS MADE FOR AN EXTENSION OF TIME BY THE RESPONDENT, THE BOARD REALIZED FROM, INTER ALIA, PARAGRAPH 13 OF THE REPLY, THAT THE JOB SITE WAS IN A REMOTE AREA. IT SEEMED CLEAR TO THE BOARD FROM THE REPLY THAT THE RESPONDENT WOULD FILE INFORMATION RESPECTING THE EMPLOYEES FOLLOWING THE RETURN OF THE RESPONDENT'S SIGNING OFFICERS FROM THE VISIT TO THE JOB SITE. ON SEPTEMBER 13TH, THE BOARD'S SOLICITOR WAS INFORMED BY THE RESPONDENT'S SOLICITOR THAT MR. ZELMER WAS NOT BACK FROM HIS VISIT TO THE JOB SITE. SUBSEQUENTLY, ON SEPTEMBER 15TH, THE BOARD NOTIFIED THE RESPONDENT'S SOLICITORS BY TELEGRAM THAT ANY FURTHER REPRESENTATIONS MUST BE IN THE HANDS OF THE BOARD BY SEPTEMBER 20TH. AS WAS POINTED OUT IN THE DECISION DATED OCTOBER 4TH, FURTHER REPRESENTATIONS WERE MADE ALTHOUGH NO LIST OF EMPLOYEES WAS FILED AND NO REQUEST WAS MADE TO EXTEND THE TIME FOR FILING FURTHER EVIDENCE. IT WAS APPARENT TO THE BOARD FROM THE LETTER WHICH CONTAINED THE FURTHER REPRESENTATIONS THAT MR. ZELMER HAD RETURNED FROM HIS VISIT TO THE JOB SITE.

4. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, RESPONDENT'S REQUEST TO FILE FURTHER EVIDENCE IN THIS MATTER IS DENIED.

12266-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) v. INDUSTRIAL MINE INSTALLATIONS LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

DECISION OF THE BOARD: (OCTOBER 11, 1966).

1. NO REPLY HAVING BEEN RECEIVED BY OCTOBER 6, 1966, THE DAY AFTER THE TERMINAL DATE SET FOR THIS APPLICATION, THE BOARD IN ACCORDANCE WITH ITS USUAL PRACTICE, DEALT WITH THE APPLICATION ON THE BASIS OF THE MATERIAL THEN BEFORE IT AND CERTIFIED THE APPLICANT.

2. A REPLY, LIST OF EMPLOYEES AND SPECIMEN SIGNATURES WAS RECEIVED BY THE BOARD ON OCTOBER 7, 1966. IT IS CLEAR THAT THESE DOCUMENTS WERE MAILED BY

REGISTERED MAIL ON OCTOBER 5, 1966 AND THE REPLY WAS CONSEQUENTLY FILED WITHIN THE TIME PRESCRIBED BY THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. THE BOARD HAS THEREFORE REVIEWED ITS DECISION OF OCTOBER 6 IN THE LIGHT OF ALL THE MATERIALS PRESENTLY BEFORE IT.

3. THE LIST OF EMPLOYEES CONTAINS 11 NAMES. NINE OF THE NAMES APPEARING ON THE NINE CERTIFICATES OF MEMBERSHIP AND ONE COMBINATION APPLICATION AND RECEIPT CORRESPOND TO NAMES ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT.

4. IN ITS REPLY THE RESPONDENT APPEARS TO PROPOSE A PROJECT CERTIFICATION. SECTION 92(1) OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:

92.-(1) WHERE A TRADE UNION APPLIES FOR CERTIFICATION AS BARGAINING AGENT OF THE EMPLOYEES OF AN EMPLOYER, THE BOARD SHALL DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING BY REFERENCE TO A GEOGRAPHIC AREA AND IT SHALL NOT CONFINE THE UNIT TO A PARTICULAR PROJECT.

ACCORDINGLY THE BOARD, IN ITS DECISION OF OCTOBER 6, DETERMINED THE UNIT BY REFERENCE TO A GEOGRAPHIC AREA. THE DEFINED AREA, NAMELY, WITHIN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING, IS THE ONE NORMALLY GRANTED IN CONSTRUCTION INDUSTRY CASES.

5. THE RESPONDENT ALSO PROPOSES THE EXCLUSION OF FOREMEN. IN CONSTRUCTION INDUSTRY CASES IT IS THE PRACTICE OF THE BOARD TO EXCLUDE NON-WORKING FOREMEN RATHER THAN FOREMEN, AND THIS WAS DONE IN OUR DECISION OF OCTOBER 6. THE BOARD SEES NO REASON TO DEPART FROM ITS PRACTICE AT THIS POINT. IF ANY QUESTION ARISES DURING COLLECTIVE BARGAINING WITH RESPECT TO THE MANAGERIAL STATUS OF ANY EMPLOYEE, IT IS OPEN TO EITHER PARTY TO SEEK CLARIFICATION FROM THE BOARD UNDER SECTION 79 OF THE ACT.

6. THE BOARD NOTES THAT THE RESPONDENT DID NOT REQUEST A HEARING.

7. HAVING REGARD, THEN, TO THE ABOVE CONSIDERATIONS:

(A) PARAGRAPH 2 OF THE BOARD'S DECISION OF OCTOBER 6, 1966 IN THIS MATTER IS REPLACED BY PARAGRAPHS 2 AND 3 OF THIS DECISION.

(B) IN ALL OTHER RESPECTS, THE BOARD'S DECISION OF OCTOBER 6, 1966 IS HEREBY CONFIRMED.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

12204-66-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. QUINTE PLUMBING AND HEATING (RESPONDENT).

2. AFTER CAREFUL CONSIDERATION, THE BOARD HAS CONCLUDED THAT IT WILL NOT DEAL WITH THE QUESTION AS TO WHETHER THIS IS AN APPLICATION FALLING WITHIN SECTION 92 OF THE LABOUR RELATIONS ACT UNTIL THE TWO REPRESENTATION VOTES REFERRED TO BELOW HAVE BEEN COMPLETED.

12204-66-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. QUINTE PLUMBING AND HEATING (RESPONDENT).

3. IN PARAGRAPH #2 OF OUR DECISION REFERRED TO ABOVE, WE DEFERRED OUR FINDING AS TO WHETHER THIS APPLICATION IS ONE FALLING UNDER SECTION 92 OF THE LABOUR RELATIONS ACT. THE APPLICANT IS SEEKING AN ALL EMPLOYEE UNIT. IF THIS IS GRANTED THE BARGAINING UNIT WOULD INCLUDE EMPLOYEES WHO SPEND MOST OF THEIR WORKING TIME IN THE RESPONDENT'S SHOP AND NOT ON CONSTRUCTION SITES. IN THESE CIRCUMSTANCES, WE ARE NOT PREPARED TO FIND THAT THIS IS AN APPLICATION FALLING UNDER SECTION 92 OF THE ACT.

STATISTICAL TABLES FOR OCTOBER 1966

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER FILED		
		OCTOBER 1ST 1966	7 MTHS OF FISCAL YR. 1966-67	1965-66
I.	CERTIFICATION	81	592	591
II.	DECLARATION TERMINATING BARGAINING RIGHTS	5	22	35
III.	DECLARATION OF SUCCESSOR STATUS	2	6	5
IV.	DECLARATION THAT STRIKE UNLAWFUL	2	14	34
V.	DECLARATION THAT LOCK-OUT UNLAWFUL	-	-	2
VI.	CONSENT TO PROSECUTE	4	54	39
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	10	70	71
VIII.	MISCELLANEOUS	<u>5</u>	<u>38</u>	<u>33</u>
TOTAL		<u>109</u>	<u>796</u>	<u>810</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER		
		OCTOBER 1ST 1966	7 MTHS OF FISCAL YR. 1966-67	1965-66
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD		83	533	724

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY MAJOR TYPES

		NUMBER DISPOSED OF		
		OCTOBER 1ST 1966	7 MTHS OF FISCAL YR. 1966-67	1965-66
I.	CERTIFICATION	84	590	599
II.	DECLARATION TERMINATING BARGAINING RIGHTS	2	21	38
III.	DECLARATION OF SUCCESSOR STATUS	2	5	9
IV.	DECLARATION THAT STRIKE UNLAWFUL	4	13	31
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	-	1
VI.	CONSENT TO PROSECUTE	3	45	32
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	8	71	71
VIII.	MISCELLANEOUS	<u>13</u>	<u>35</u>	<u>50</u>
TOTAL		<u>116</u>	<u>780</u>	<u>831</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>OCTOBER 1ST 7 MTHS FISCAL YR.</u> <u>1966</u>	<u>1966-67</u>	<u>1965-66</u>	<u>OCTOBER 1ST 7 MTHS FISCAL YR.</u> <u>1966</u>	<u>1966-67</u>	<u>1965-66</u>
<u>I. CERTIFICATION</u>						
GRANTED	66	431	442	1504	11075	11433
DISMISSED	16	104	104	1039	9054	4891
WITHDRAWN	<u>2</u>	<u>55</u>	<u>53</u>	<u>56</u>	<u>798</u>	<u>3088</u>
TOTAL	<u>84</u>	<u>590</u>	<u>599</u>	<u>2599</u>	<u>20927</u>	<u>19412</u>
<u>II. TERMINATION</u>						
<u>OF BARGAINING</u>						
<u>RIGHTS</u>						
GRANTED	2	14	17	2	462	1175
DISMISSED	-	7	19	-	187	518
WITHDRAWN	<u>-</u>	<u>-</u>	<u>2</u>	<u>-</u>	<u>-</u>	<u>73</u>
TOTAL	<u>2</u>	<u>21</u>	<u>38</u>	<u>2</u>	<u>649</u>	<u>1766</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>OCTOBER 1ST 7 MONTHS OF FISCAL YR.</u>		
		<u>1966</u>	<u>1966-67</u>	<u>1965-66</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	2	6
	DISMISSED	-	-	3
	WITHDRAWN	<u>4</u>	<u>11</u>	<u>22</u>
	TOTAL	<u>4</u>	<u>13</u>	<u>31</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	1
	WITHDRAWN	<u>-</u>	<u>-</u>	<u>-</u>
	TOTAL	<u>-</u>	<u>-</u>	<u>1</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	1	7	6
	DISMISSED	-	4	4
	WITHDRAWN	<u>2</u>	<u>34</u>	<u>22</u>
	TOTAL	<u>3</u>	<u>45</u>	<u>32</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED
OF BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	OCTOBER 1ST 1966	7 MTHS 1966-67	FISCAL YEAR 1965-66
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	2	10	14
POST-HEARING VOTE	4	23	17
BALLOTS NOT COUNTED	-	-	-
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	1	5	4
POST-HEARING VOTE	6	41	21
BALLOTS NOT COUNTED	-	-	2
 TOTAL	<u>13</u>	<u>79</u>	<u>58</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	OCTOBER 1ST 1966	7 MTHS 1966-67	FISCAL YEAR 1965-66
*RESPONDENT UNION SUCCESSFUL	-	4	1
RESPONDENT UNION UNSUCCESSFUL	<u>2</u>	<u>11</u>	<u>15</u>
 TOTAL	<u>2</u>	<u>15</u>	<u>16</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING NOVEMBER 1966

BARGAINING AGENTS CERTIFIED DURING NOVEMBER

NO VOTE CONDUCTED

11831-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. UNI-FORM BUILDERS LTD. (RESPONDENT) V. CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION NO. 1, N.C.C.L. (INTERVENER)

- AND -

11846-66-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIV. NO. 1, N.C.C.L. (APPLICANT) V. UNI-FORM BUILDERS LTD. (RESPONDENT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 527 (INTERVENER #1) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (INTERVENER #2).

(THE ABOVE MATTERS ARE CONSOLIDATED).

UNIT #1: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

(CARPENTERS LOCAL 93 CERTIFIED)

UNIT #2: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMEN." (22 EMPLOYEES IN THE UNIT).

(LABOURERS LOCAL 527 CERTIFIED).

(APPLICATION OF CANADIAN CONSTRUCTION WORKERS' UNION DIV. NO 1, N.C.C.L., DISMISSED).

11867-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. PARKE, DAVIS & COMPANY LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (17 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 583).

11949-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE HYDRO-ELECTRIC COMMISSION OF THE TOWNSHIP OF NORTH YORK (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PAYMASTER, FIELD INSPECTOR OF CONTRACTS, BUYER, SENIOR TECHNICIANS IN EACH OF THE OVERHEAD, UNDERGROUND AND STATION DESIGN GROUPS, ONE SECRETARY TO EACH OF THE FOLLOWING: GENERAL MANAGER, ASSISTANT GENERAL MANAGER, SECRETARY-TREASURER, SOLICITOR, PERSONNEL MANAGERS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT

BETWEEN THE RESPONDENT AND LOCAL #11, CANADIAN UNION OF PUBLIC EMPLOYEES EFFECTIVE UNTIL MARCH 31ST, 1967." (92 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 585).

12030-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CREATIVE DISPLAY ADVERTISING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (51 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 591).

12229-66-R: NORTH BAY GENERAL WORKERS UNION, LOCAL 1603, C.L.C. (APPLICANT) V. H. E. BROWN SUPPLY CO. (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY AND FERRIS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT SALES STAFF INCLUDES OUTSIDE SALESMEN AND INSIDE SALESMEN.

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AS INSIDE SALESMEN AT NORTH BAY AND FERRIS, SAVE AND EXCEPT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

12232-66-R: UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS (APPLICANT) V. ST. MARYS COLD STORAGE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WALKERTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

12234-66-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE OTTAWA ZONE OF THE QUEBEC DIVISION COVERING THE CITIES OF OTTAWA AND EASTVIEW, THE TOWNSHIP OF NEPEAN AND THE VILLAGE OF PETAWAWA, SAVE AND EXCEPT THE STORE MANAGER AND ONE DESIGNATED DEPARTMENT MANAGER PER STORE AND PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER." (457 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 592).

12258-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. THE CANADA STARCH COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AS LABORATORY TECHNICIANS AT CARDINAL, SAVE AND EXCEPT LABORATORY FOREMEN, PERSONS ABOVE THE RANK OF LABORATORY FOREMAN, SUPERVISORY TRAINEES, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND UNITED FOOD PROCESSORS UNION LOCAL 483." (20 EMPLOYEES IN THE UNIT).

12261-66-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. BERGMAN & NELSON LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND EMPLOYEES COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND APPLICANT, DATED JULY 20, 1966, AND BETWEEN THE RESPONDENT AND LOCAL UNION 1669, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, WHICH WAS RENEWED ON AUGUST 2, 1966." (8 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 594).

12281-66-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. OTTAWA DIVISION (WOODLANDS) CONSOLIDATED PAPER CORPORATION LIMITED (RESPONDENT) V. EMPLOYEE (OBJECT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS WOODS OPERATIONS AT RADIAN LAKE, COUNTY OF RENFREW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SCALERS AND ASSISTANT SCALERS, CLERKS, TIMEKEEPERS, OFFICE AND SALES STAFF." (54 EMPLOYEES IN THE UNIT).

(IN VIEW OF THE SPECIAL CIRCUMSTANCES OF THIS CASE AND THE AGREEMENT OF THE PARTIES)

12289-66-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. EATON YALE & TOWNE INC. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS HOLLYMADE LOCK AND HARDWARE DIVISION AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (48 EMPLOYEES IN THE UNIT).

12296-66-R: INTERNATIONAL LABORERS' UNION OF NORTH AMERICA - LOCAL 527 (C.L.C.) (A.F.L.-C.I.O.) (APPLICANT) V. L. ZUCCARINI GENERAL CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 603).

12307-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ALUMINUM COMPANY OF CANADA, LIMITED, EXTRUSION DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AURORA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (94 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12318-66-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. HORNE'S RESTAURANT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN MURRAY TOWNSHIP, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (25 EMPLOYEES IN THE UNIT).

12326-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. RIVERSIDE HOSPITAL OF OTTAWA (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS HOSPITAL AT OTTAWA, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

12329-66-R: NURSES' ASSOCIATION, ST. JOSEPH'S GENERAL HOSPITAL (PETERBOROUGH) (APPLICANT) V. ST. JOSEPH'S GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL LAY PERSONNEL, INCLUDING TEACHERS, EMPLOYED BY THE RESPONDENT AT PETERBOROUGH AS REGISTERED OR GRADUATE NURSES, SAVE AND EXCEPT THOSE CLASSIFIED AS SUPERVISORS OR ABOVE THE RANK OF SUPERVISOR AND ANY OTHER EXERCISING MANAGERIAL FUNCTIONS, THOSE REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND THOSE NOT ENGAGED IN A NURSING CAPACITY." (105 EMPLOYEES IN THE UNIT).

FOR THE PURPOSE OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT CURRENTLY NURSES EMPLOYED AS HEAD NURSES DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE INCLUDED IN THE BARGAINING UNIT.

12330-66-R: NURSES' ASSOCIATION, ST. JOSEPH'S GENERAL HOSPITAL (PETERBOROUGH) (APPLICANT) V. ST. JOSEPH'S GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL LAY PERSONNEL, INCLUDING TEACHERS, REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK BY THE RESPONDENT AT PETERBOROUGH AS REGISTERED OR GRADUATE NURSES, SAVE AND EXCEPT THOSE CLASSIFIED AS SUPERVISORS OR ABOVE THE RANK OF SUPERVISOR AND ANY OTHER EXERCISING MANAGERIAL FUNCTIONS, AND THOSE NOT ENGAGED IN A NURSING CAPACITY." (38 EMPLOYEES IN THE UNIT).

FOR THE PURPOSE OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT CURRENTLY NURSES EMPLOYED AS HEAD NURSES DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE INCLUDED IN THE BARGAINING UNIT.

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12337-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. MOTOR WHEEL CORPORATION OF CANADA LTD. (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

- AND -

12343-66-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. MOTOR WHEEL CORPORATION OF CANADA LTD. (RESPONDENT).

(THE ABOVE MATTERS ARE CONSOLIDATED)

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS COVERED BY A CERTIFICATE OF EVEN DATE HERewith WITH RESPECT TO THE CANADIAN UNION OF OPERATING ENGINEERS AND THE RESPONDENT." (31 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS POWER HOUSE AT CHATHAM, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (2 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 605).

12339-66-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. DOMINION STORE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT MIDLAND, SAVE AND EXCEPT ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, OFFICE STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN APPLICANT AND THE RESPONDENT." (23 EMPLOYEES IN THE UNIT).

12340-66-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. STEINBERG'S LIMITED, DEPARTMENT STORE DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT SECTION HEADS, PERSONS ABOVE THE RANK OF SECTION HEAD, SHOPPERS, GUARDS AND OFFICE STAFF." (140 EMPLOYEES IN THE UNIT).

12345-66-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION # 233 (APPLICANT) v. VULCAN EQUIPMENT COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, ENGINEERING, SALES AND OFFICE STAFF." (33 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12352-66-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) v. DU PONT CANADA LIMITED (RESPONDENT) v. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN QUALITY CONTROL WORK IN ITS LABORATORY AT AJAX, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (13 EMPLOYEES IN THE UNIT).

12355-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) v. ADVANCED DEVICES CENTRE, APPARATUS DIVISION, NORTHERN ELECTRIC CO., LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT AT ITS PLANT AT 75 MOODIE DRIVE, OTTAWA, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

12356-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED, RESEARCH AND DEVELOPMENT LABORATORIES (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT AT ITS PLANT IN THE TOWNSHIP OF NEPEAN, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (8 EMPLOYEES IN THE UNIT).

12357-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. COLGATE-PALMOLIVE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND SHIFT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN OR SHIFT FOREMAN, OFFICE, SALES AND MARKETING STAFF, AND REGISTERED NURSE." (342 EMPLOYEES IN THE UNIT).

12361-66-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (APPLICANT) V. INDEX CARD COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND LUNCH ROOM EMPLOYEES." (34 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE CIRCUMSTANCES OF THE INSTANT CASE).

12365-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. C. A. PITTS GENERAL CONTRACTOR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIPS OF ELIZABETHTOWN, FRONT OF YONGE, FRONT OF ESCOTT, FRONT OF LEEDS AND LANSLOWNE, ALL IN THE COUNTY OF LEEDS, ENGAGED IN THE OPERATIONS OF CRANES, SHOVELS BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT).

THE GEOGRAPHIC AREA PROPOSED BY BOTH THE APPLICANT AND THE RESPONDENT IS THE COUNTY OF LEEDS. THERE IS NO GENERAL PATTERN OF BARGAINING AMONG TRADE UNIONS AND EMPLOYERS FROM WHICH IT COULD BE INFERRED THAT THE COUNTY OF LEEDS IS AN APPROPRIATE GEOGRAPHIC AREA. IN THESE CIRCUMSTANCES, AS A PURELY INTERIM MEASURE, THE BOARD THEREFORE FURTHER FOUND THE ABOVE AREA TO BE APPROPRIATE.

12367-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. HYDROTILE CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (21 EMPLOYEES IN THE UNIT).

12368-66-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) V. NIXON BUILDING PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF BARRIE, COLLIA, MIDLAND AND COLLINGWOOD, SAVE AND EXCEPT FOREMEN, DISPATCHERS, PERSONS ABOVE THE RANKS OF FOREMAN AND DISPATCHER, AND OFFICE AND SALES STAFF." (57 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12370-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. SUNNYBROOK HOSPITAL (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE POWER HOUSE OF THE RESPONDENT AT ITS HOSPITAL IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER." (26 EMPLOYEES IN THE UNIT).

12372-66-R: HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743, AFFILIATED WITH HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO, C.L.C. & V & D L C (APPLICANT) V. SEMINOLE HOTEL ENTERPRISES LIMITED (RESPONDENT).

UNIT: "ALL WAITERS AND BARTENDERS OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, AND PERSONS REGULARLY EMPLOYED FOR MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

12376-66-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) V. NATIONAL TEXTILES LIMITED, DRAPERY DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (87 EMPLOYEES IN THE UNIT).

12380-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1988 (APPLICANT) V. M. J. LAFORTUNE CONST. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LANARK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 607).

12381-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 837 (APPLICANT) V. BEATTY-HALL CONSTRUCTION Co. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

12382-66-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 1819 (APPLICANT) V. CANADIAN STRUCTURAL GLASS LIMITED (RESPONDENT).

UNIT: "ALL GLAZIERS AND GLAZIERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE T

OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 608).

12383-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DEPCO METAL PRODUCTS LTD. (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (20 EMPLOYEES IN THE UNIT).

12384-66-R: FUR & LEATHER WORKERS' UNION, LOCAL 82, AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. STAR SLIPPER COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DESIGNERS, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (145 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12385-66-R: FUR & LEATHER WORKERS' UNION, LOCAL 82, AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. VALENTI SHOE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DESIGNERS, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (42 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12386-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. CLIMBING CRANE SERVICE LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

12387-66-R: LOCAL 12-L, TORONTO, OF THE LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (APPLICANT) V. GRENLER GRAPHIC PRODUCTIONS LIMITED (RESPONDENT).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

12389-66-R: GENERAL TRUCK DRIVERS UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ANDERSON CARTAGE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12390-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. GEORGE AND ASMUSSEN LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

12394-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (APPLICANT) V. ARMELLOY CONCRETE FLOORS LIMITED (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT).

12395-66-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. D. A. CLARKE VENEERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BURKS FALLS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, LOG SCALERS, OFFICE AND SALES STAFF." (52 EMPLOYEES IN THE UNIT).

12397-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ALGOMA STEELWORKERS CREDIT UNION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (11 EMPLOYEES IN THE UNIT).

12398-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. PENTAGON CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS FROM THE TIMMINS FEDERAL BUILDING,

SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

12404-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL #1071 (APPLICANT) V. BALL BROTHERS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON AND HALDIMAND IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

12406-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BRYDON BRASS MANUFACTURING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (25 EMPLOYEES IN THE UNIT).

12419-66-R: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) V. BRENTWOOD CONTAINERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

12420-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. ETOBICOKE IRONWORKS LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

12424-66-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. RCA VICTOR COMPANY, LTD. (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOMS, AT ITS PLANT IN MIDLAND, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (3 EMPLOYEES IN THE UNIT).

12425-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. DARLING AND COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

12426-66-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938, GENERAL TRUCK DRIVERS (APPLICANT) V. FRASER-BRACE ENGINEERING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF 35 MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

12428-66-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA - (C.L.C.) (A.F.L.-C.I.O.) (APPLICANT) V. W. F. FLYNN & COMPANY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, WITH THE EXCEPTION OF THE TOWNSHIP OF McNAB, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12430-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. NEW-GRAIN LIMITED CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF 500 CLEANERS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, DRIVER SALESMEN, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (12 EMPLOYEES IN THE UNIT).

12433-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. RAY-GORDON LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, SALES TECHNICIANS, SALESMEN, OFFICE STAFF, CLERKS AND PARTS DEPARTMENT CLERKS AND SHIPPERS." (12 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12434-66-R: HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 280 A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. CAROUSEL INN (OSHAWA) LIMITED (RESPONDENT).

UNIT: "ALL BARTENDERS, TAPMEN, BEVERAGE WAITERS, BAR-BOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT IN ITS OPERATIONS AT OSHAWA, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (9 EMPLOYEES IN THE UNIT).

12440-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. GREGOIRE PERRAULT INCORPORATED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12441-66-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. FEDERATED MILLINERY CO. OF CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS DEPARTMENT LEASED FROM STEINBERG'S LTD., MIRACLE MART DEPARTMENT STORE DIVISION AT OTTAWA." (2 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12448-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL NO. 506 (APPLICANT) V. EMERY ENGINEERING & CONTRACTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN THE COUNTY OF SIMCOE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT).

12450-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (APPLICANT) V. ROBERT McALPINE LIMITED (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT AT OR OUT OF KAPUSKASING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12453-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. STEEL SASH INSTALLATIONS (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

12321-66-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED PLANT GUARD WORKERS, LOCAL 1958 (APPLICANT) V. DOUGLAS AIRCRAFT COMPANY OF CANADA, LIMITED (RESPONDENT) V. CANADIAN GUARDS ASSOCIATION (INTERVENER).

UNIT: "ALL SECURITY GUARDS EMPLOYED BY THE RESPONDENT AT THE TOWNSHIP OF TORONTO, SAVE AND EXCEPT SERGEANTS AND PERSONS ABOVE THE RANK OF SERGEANT." (26 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		22
NUMBER OF PERSONS WHO CAST BALLOTS	22	
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
APPLICANT	12	
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
INTERVENER	10	

12360-66-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SILVERWOOD DAIRIES, LIMITED (RESPONDENT) V. SILVERWOOD EMPLOYEES' ASSOCIATION, CHATHAM BRANCH (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF CHATHAM, SAVE AND EXCEPT PLANT SUPERINTENDENT, CHIEF ENGINEER, SALES MANAGERS, ROUTE FOREMEN, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND PERSONS EMPLOYED FOR VACATION PERIODS, RELIEF OR SEASONAL WORK." (39 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE BARGAINING HISTORY OF THE RESPONDENT AND THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		47
NUMBER OF PERSONS WHO CAST BALLOTS	44	
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
APPLICANT	28	
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
INTERVENER	16	

12362-66-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. BURGESS BATTERY COMPANY, DIVISION OF SERVEL (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA FALLS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SECURITY GUARDS, AND OFFICE AND SALES STAFF." (203 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		182
NUMBER OF PERSONS WHO CAST BALLOTS		182
NUMBER OF SPOILED BALLOTS	8	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	138	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	36	

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

12026-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE PARKS AND RECREATION COMMISSION FOR THE CITY OF ST. CATHARINES (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS ENGAGED IN CONDUCTING AND IMPLEMENTING THE COMMISSION'S RECREATIONAL AND NURSERY SCHOOL PROGRAM, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(48 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		42
NUMBER OF PERSONS WHO CAST BALLOTS		42
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	28	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	14	

12071-66-R: INTERNATIONAL MOLDERS & ALLIED WORKERS, UNION A.F.L.-C.I.O. CLC. (APPLICANT) v. WEBSTER MFG. (LONDON) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (182 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT PROBATIONARY EMPLOYEES OF THE RESPONDENT ARE INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		117
NUMBER OF PERSONS WHO CAST BALLOTS		107
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	68	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	38	

12181-66-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. WESTON BAKERIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS WOODSTOCK AND LONDON BRANCHES, SAVE AND EXCEPT ROUTE FOREMEN, PERSONS ABOVE THE RANK OF ROUTE FOREMAN, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		17
NUMBER OF PERSONS WHO CAST BALLOTS		17
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
APPLICANT	16	
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
GENERAL TRUCK DRIVERS' UNION, LOCAL		
879, AFFILIATED WITH THE INTERNATIONAL		
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,		
WAREHOUSEMEN AND HELPERS OF AMERICA	1	

12199-66-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. APPLEFORD PAPER PRODUCTS, DIVISION OF THE K.V.P. COMPANY LTD. (RESPONDENT) V. PRINTING SPECIALTIES & PAPER PRODUCTS UNION, LOCAL 540 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND SECURITY GUARDS." (225 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		206
NUMBER OF PERSONS WHO CAST BALLOTS		207
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
APPLICANT	177	
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
INTERVENER	29	

12257-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. VOLKSWAGEN CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, GROUP LEADERS AND SECTION SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN, GROUP LEADER AND SECTION SUPERVISOR, TECHNICAL STAFF, OFFICE STAFF, SALES STAFF INCLUDING PARTS SALES AND COUNTER STAFF, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (75 EMPLOYEES IN THE UNIT).

THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS INSPECTORS ARE INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		61
NUMBER OF PERSONS WHO CAST BALLOTS		61
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
APPLICANT	34	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	27	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING NOVEMBER

NO VOTE CONDUCTED

11205-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DILORENZO CONSTRUCTION COMPANY (RESPONDENT). (35 EMPLOYEES).

11206-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. FORMING CONSTRUCTION COMPANY (RESPONDENT). (3 EMPLOYEES).

11207-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. TORONTO FORMING COMPANY (RESPONDENT). (NO EMPLOYEES).

11210-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. TORONTO FORMING COMPANY (RESPONDENT). (NO EMPLOYEES).

11213-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. DI LORENZO CONSTRUCTION COMPANY (RESPONDENT). (8 EMPLOYEES).

11214-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. TORONTO FORMING COMPANY (RESPONDENT). (8 EMPLOYEES).

11215-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. FORMING CONSTRUCTION LIMITED (RESPONDENT). (69 EMPLOYEES).

11536-65-R: LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS INTERNATIONAL UNION, LOCAL 351 (APPLICANT) V. VAIL'S SYSTEMS COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (65 EMPLOYEES).

12291-66-R: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (APPLICANT) V. IDEAL LAUNDRY & DRY CLEANERS LTD. (RESPONDENT). (33 EMPLOYEES).

12292-66-R: LOCAL UNION 46, THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT). (204 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 596).

12338-66-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ANDERSON CARTAGE LIMITED (RESPONDENT). (18 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 606).

12371-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ELLIS-DON LIMITED (RESPONDENT). (2 EMPLOYEES).

12402-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 837 (APPLICANT) V. SCHWENGER CONSTRUCTION LIMITED (RESPONDENT). (23 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 612).

12432-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. RAY GORDON EQUIPMENT RENTALS LTD. (RESPONDENT). (NO EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

12268-66-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. CUTLER-HAMMER CANADA LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (115 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

112

NUMBER OF PERSONS WHO CAST BALLOTS

105

NUMBER OF BALLOTS MARKED IN FAVOUR OF
APPLICANT

44

NUMBER OF BALLOTS MARKED AGAINST

APPLICANT

61

12336-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. PARKE, DAVIS & COMPANY LTD. (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ITS BROCKVILLE LABORATORIES, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE STAFF, LABORATORY TECHNICAL PERSONNEL AND SALES STAFF." (112 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		109
NUMBER OF PERSONS WHO CAST BALLOTS		109
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
APPLICANT	45	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	64	

12366-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. A.C. WICKMAN LIMITED (RESPONDENT). v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER).

VOTING CONSTITUENCY: "ALL HOURLY RATED EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUB-FOREMEN, PERSONS ABOVE THE RANK OF SUB-FOREMAN, OFFICE STAFF AND SECURITY GUARDS." (113 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		105
NUMBER OF PERSONS WHO CAST BALLOTS		105
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
APPLICANT	38	
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
INTERVENER	66	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

11348-65-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210 (APPLICANT) v. THE CORPORATION OF THE COUNTY OF LAMBTON (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE CORPORATION OF THE COUNTY OF LAMBTON EMPLOYED AT LAMBTON COUNTY'S TWILIGHT HAVEN, PETROLIA, ONTARIO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, CHIEF ENGINEER, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (48 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

FOR THE PURPOSES OF CLARITY, THE BOARD FURTHER DECLARED THAT THE BARGAINING UNIT INCLUDES CERTIFIED NURSING ASSISTANTS.

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		46
NUMBER OF PERSONS WHO CAST BALLOTS		46
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
APPLICANT	12	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	34	

12248-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. HART CHEMICAL LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, SALES AND LABORATORY STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(40 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		37
NUMBER OF PERSONS WHO CAST BALLOTS		37
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
APPLICANT	15	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	22	

12252-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. THE CANADIAN PRESSED BRICK CO. LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(19 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		20
NUMBER OF PERSONS WHO CAST BALLOTS		20
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
APPLICANT	9	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	11	

12259-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. SIMONDS CANADA SAW COMPANY LIMITED GRINDING WHEEL DIVISION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BROCKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(69 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		67
NUMBER OF PERSONS WHO CAST BALLOTS		
BALLOTS SEGREGATED AND NOT COUNTED	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	19	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	45	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING NOVEMBER

12243-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
LOCAL 2466 (APPLICANT) V. MASTERCRAFT ENGINEERING & CONSTRUCTION A
DIVISION OF MASTERCRAFT HOMES LIMITED (RESPONDENT). (NO EMPLOYEES).

12405-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION
No. 597 (APPLICANT) V. BALL BROTHERS LIMITED (RESPONDENT).
(17 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING NOVEMBER

12346-66-R: PATRICK J. HARTE (APPLICANT) V. UNITED STEEL WORKERS OF
AMERICA (RESPONDENT). (50 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 614).

12348-66-R: CORPORATION OF THE VILLAGE OF POINT EDWARD ARENA COMMISSION
(APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT).
(5 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 615).

12349-66-R: VILLAGE OF POINT EDWARD PUBLIC WORKS DEPARTMENT (APPLICANT)
V. CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT). (5 EMPLOYEES).
(DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 615).

12415-66-R: EMPLOYEE'S OF - ACME ELECTRIC POLYGON LTD-DIVISION SERVICES
LTD., 50 NORTHLINE RD., TORONTO ONT. (APPLICANTS) V. INTERNATIONAL UNION
OF ELECTRICAL, RADIO AND MACHINE WORKER'S AFL-CIO-CLC. - LOCAL 541
(RESPONDENT). (32 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 616).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

NOVEMBER

12086-66-R: CANADIAN LABOUR CONGRESS FEDERAL UNION No. 1632 (APPLICANT) V. KENWOOD MILLS, A DIVISION OF HUYCK CANADA LIMITED (RESPONDENT) V. KENWOOD EMPLOYEES ASSOCIATION (PREDECESSOR TRADE UNION) V. GROUP OF EMPLOYEES (OBJECTORS). (GRANTED).

UNIT: "ALL HOURLY AND PIECE-WORK EMPLOYEES OF KENWOOD MILLS AT ARNPRIOR, SAVE AND EXCEPT PERSONS HAVING AUTHORITY TO EMPLOY, DISCHARGE OR DISCIPLINE EMPLOYEES AND OFFICE CLERICAL STAFF."

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

277

NUMBER OF PERSONS WHO CAST BALLOTS

277

NUMBER OF SPOILED BALLOTS

2

NUMBER OF BALLOTS MARKED IN FAVOUR OF
CANADIAN LABOUR CONGRESS FEDERAL
UNION No. 1632

206

NUMBER OF BALLOTS MARKED IN FAVOUR OF
KENWOOD EMPLOYEES' ASSOCIATION

69

12391-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE SARNIA BOARD OF EDUCATION (RESPONDENT). (GRANTED).

12392-66-R: OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. TWIN CITY GAS COMPANY LIMITED (RESPONDENT) V. PORT ARTHUR-FORT WILLIAM GENERAL WORKERS UNION, LOCAL 1610, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

NOVEMBER

12410-66-U: THE MUNICIPALITY OF METROPOLITAN TORONTO (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION No. 79 (RESPONDENT). (WITHDRAWN).

12411-66-U: THE CORPORATION OF THE CITY OF TORONTO (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION No. 79 (RESPONDENT). (WITHDRAWN).

12412-66-U: THE CORPORATION OF THE CITY OF TORONTO (APPLICANT) V. TORONTO CIVIC EMPLOYEES UNION No. 43 C.U.P.E. AND S. NOLAN, ALFRED PLUNKETT, JOHN CHARLES MCCURTAN, WILLIAM CLIFFORD, MCGURGIN AND RUSSELL GORDON M. DOYLE (RESPONDENTS). (WITHDRAWN).

12416-66-U: SCHELL INDUSTRIES LIMITED (APPLICANT) V. THE IRON WORKERS DISTRICT COUNCIL OF EASTERN CANADA, ON BEHALF OF ITS AFFILIATED LOCAL UNIONS 700 (WINDSOR), 721 (TORONTO), 736 (HAMILTON), 759 (PORT ARTHUR), 765 (OTTAWA), 786 (SUDBURY) IN THE PROVINCE OF ONTARIO, OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFL-CIO) AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL NO. 721 (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING NOVEMBER

12065-66-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF LINCOLN (RESPONDENT). (WITHDRAWN).

12066-66-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. WILLIAM HOLMAN (RESPONDENT). (WITHDRAWN).

12270-66-U: ALLAN ZANDBERG (APPLICANT) V. LOCAL UNION 67 UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (RESPONDENT). (DISMISSED).

12271-66-U: MEL LE BLANC (APPLICANT) V. LOCAL UNION 67 UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (RESPONDENT). (DISMISSED).

12308-66-U: NORMAN FARR, 5425 WINSTON RD., BURLINGTON, ONTARIO (APPLICANT) V. UNITED ASSOCIATION, LOCAL 67, 1636 BARTON STREET EAST, HAMILTON, ONTARIO (RESPONDENT). (DISMISSED).

12309-66-U: LEO PRATT, 11 CHURCH STREET, WATERDOWN, ONTARIO (APPLICANT) V. UNITED ASSOCIATION, LOCAL 67, 1636 BARTON STREET EAST, HAMILTON, ONTARIO (RESPONDENT). (DISMISSED).

12310-66-U: LUIGI CIOTTI, 173 NUGENT DR., HAMILTON, ONTARIO (APPLICANT) V. UNITED ASSOCIATION, LOCAL 67, 1636 BARTON STREET EAST, HAMILTON, ONTARIO (RESPONDENT). (DISMISSED).

12417-66-U: SCHELL INDUSTRIES LIMITED (APPLICANT) V. ALLAN MACISAAC, AND THE IRON WORKERS DISTRICT COUNCIL OF EASTERN CANADA, ON BEHALF OF ITS AFFILIATED LOCAL UNIONS 700 (WINDSOR), 721 (TORONTO), 736 (HAMILTON), 759 (PORT ARTHUR), 765 (OTTAWA), 786 (SUDBURY) IN THE PROVINCE OF ONTARIO, OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFL-CIO), AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL NO. 721 (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF
DURING NOVEMBER

11557-65-U: LEONARD R. BOIVIN, MEMBER LOCAL 800, SUDBURY (COMPLAINANT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 67, AND NORMAN BEANLAND BUSINESS MANAGER OF LOCAL 67 (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 617).

11558-65-U: STEPHEN LEACHIE LOCAL 46, TORONTO, ONTARIO (COMPLAINANT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 67, AND NORMAN BEANLAND, BUSINESS MANAGER OF LOCAL 67 (RESPONDENTS).

11803-66-U: DAN K. HOECKE (COMPLAINANT) V. CANADIAN STRUCTURAL GLASS LIMITED (RESPONDENT).

12161-66-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. JET METAL PRODUCTS LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 620).

12272-66-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2679 AFFILIATED WITH THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY (COMPLAINANT) V. ESSEX QUALITY KITCHENS GEORGETOWN ONTARIO (RESPONDENT).

12276-66-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 18 (COMPLAINANT) V. SOVEREIGN CONSTRUCTION COMPANY LIMITED (RESPONDENT).

12288-66-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION, LOCAL 220, 482 YORK ST., LONDON, ONTARIO (COMPLAINANT) V. NORVIEW HOME FOR THE AGED, HIGHWAY #3, SIMCOE, ONTARIO (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 623).

12341-66-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. NORTH AMERICAN PLASTICS LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 626).

12347-66-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. ALUMINIM COMPANY OF CANADA LTD., (AURORA WORKS) (RESPONDENT).

12373-66-U: UNITED GARMENT WORKERS OF AMERICA LOCAL #253 (COMPLAINANT) V. CANADA SPORTSWEAR COMPANY (RESPONDENT).

12409-66-U: ELLIS-DON LIMITED (COMPLAINANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL UNION 793 AFL - CIO (RESPONDENT).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

12240-66-M: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION 1819, AND EMERY GLASS & ALUMINUM LIMITED; QUEEN CITY GLASS (TORONTO) LIMITED; KENNEDY GLASS LIMITED; PILKINGTON GLASS LIMITED; CANADIAN PITTSBURGH INDUSTRIES, LIMITED; CONSOLIDATED GLASS INDUSTRIES, LIMITED; SERVICE GLASS & MIRROR LIMITED; CANADIAN STRUCTURAL GLASS, LIMITED; JESSUP GLASS & MIRROR; JACK'S GLASS & MIRROR; AACHEN GLASS & MIRROR LIMITED; SCARBOROUGH GLASS & MIRROR LIMITED; GLACO GLASS & MIRROR LIMITED; KNIGHTS GLASS & SERVICES LIMITED; PEEL GLASS & MIRROR LIMITED; ADVANCE GLASS & MIRROR; G. SCHNEIDER & SON; STAR GLAZING COMPANY; C. J. FLICK LIMITED (APPLICANTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 633).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING

NOVEMBER

11002-65-M: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. HAYES STEEL PRODUCTS LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 634).

11830-66-M: LE DROIT (APPLICANT) V. LE SYNDICAT DES JOURNALISTES D'OTTAWA (RESPONDENT).

11986-66-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES, AND ITS LOCAL 893, C.L.C. (APPLICANT) V. THE SAULT STE. MARIE BOARD OF EDUCATION (RESPONDENT).

11987-66-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL #896, C.L.C. (APPLICANT) V. THE BOARD OF MANAGEMENT OF THE WEST NIPISSING HOME FOR THE AGED (RESPONDENT).

12188-66-M: BOARD OF TRUSTEES OF THE OTTAWA CIVIC HOSPITAL, AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 576 (APPLICANTS).

(SEE INDEXED ENDORSEMENT PAGE 635).

12282-66-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 138 (TRADE UNION) V. SUDBURY HYDRO-ELECTRIC COMMISSION (EMPLOYER).

REFERENCE TO BOARD PURSUANT TO SECTION 79A OF THE ACT DISPOSED OF
DURING NOVEMBER

10537-65-M: FOOD HANDLERS' LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, C.L.C. (TRADE UNION) V. LEADER'S CLOVER FARMS FOOD MARKET (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 636).

10538-65-M: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, C.L.C. (TRADE UNION) V. LEADER'S CLOVER FARMS FOOD MARKET (EMPLOYER).

12354-66-M: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (TRADE UNION) V. LAURENTIAN TRANSIT (SUDBURY) LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 641).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

11694-66-R: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. DAILY JOURNAL-RECORD (RESPONDENT). (REQUEST DENIED).

12002-66-R: FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC. (APPLICANT) V. ROMI FOODS LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 644).

12032-66-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) V. STYLE-RITE BLOUSE COMPANY LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 645).

12258-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. THE CANADA STARCH COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (GRANTED).

INDEXED ENDORSEMENTS - CERTIFICATION

11586-65-R: LOCAL 280 OF THE HOTEL AND RESTAURANT EMPLOYEE'S AND BARTENDER'S INTERNATIONAL UNION. A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. DOMINION SPORTSERVICE LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., F. CORTESE AND T. MEAGHER FOR THE APPLICANT, T. F. STORIE, J. JACOBS AND MRS. J. PUMA FOR THE RESPONDENT.

DECISION OF J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER: (NOVEMBER 9, 1966).

1. BY A DECISION DATED MAY 24TH, 1966, THE BOARD DIRECTED THE TAKING OF A REPRESENTATION VOTE IN THIS MATTER. ON JUNE 8TH, IN ACCORDANCE WITH THE REGISTRAR'S INSTRUCTIONS, THE PARTIES MET FOR THE PURPOSE OF MAKING ARRANGEMENTS FOR THE VOTE. BY LETTER OF THE SAME DATE, COUNSEL FOR THE RESPONDENT NOTIFIED THE BOARD OF THE ARRANGEMENTS AGREED UPON BY THE PARTIES. MORE SPECIFICALLY, THE PARTIES AGREED ON A VOTERS' LIST, THE NAMES OF THE SCRUTINEERS AND THE WITNESSES FOR THE COUNTING OF THE BALLOTS. THE PARTIES ALSO AGREED THAT THE POLLING BOOTH WOULD BE LOCATED IN THE BOOT AND BRIDLE LOUNGE AT THE RESPONDENT'S GREENWOOD PREMISES AND THAT THE POLL WOULD BE OPEN FROM 10:00 A.M. TO 2:00 P.M. (FLAT RACING WHICH TAKES PLACE IN THE AFTERNOON HAD JUST CLOSED AT GREENWOOD ON JUNE 4TH). AS WELL THE PARTIES AGREED THAT ONE NOTICE WAS TO BE POSTED ON THE BULLETIN BOARD AT GREENWOOD.
2. THE PARTIES AGREED TO JUNE 15TH AND JUNE 22ND AS ALTERNATIVE DATES FOR THE TAKING OF THE VOTE. COUNSEL FOR THE RESPONDENT IN HIS LETTER OF JUNE 8TH INFORMED THE BOARD THAT THE RESPONDENT HAD SUGGESTED THAT THE VOTE NOT BE HELD UNTIL AFTER JULY 18TH, SINCE THE GREENWOOD RACEWAY HAD CLOSED ITS OPERATIONS ON JUNE 4TH AND WOULD NOT RE-OPEN UNTIL JULY 18TH. COUNSEL STATED THAT THE RESPONDENT'S SUGGESTION HAD NOT BEEN ACCEPTABLE TO THE APPLICANT. COUNSEL FOR THE RESPONDENT NEVERTHELESS REQUESTED THAT THE BOARD DELAY THE TAKING OF THE VOTE UNTIL ON OR AFTER JULY 18TH WHEN EMPLOYEES OF THE RESPONDENT WOULD BE WORKING AT GREENWOOD. THE REGISTRAR BY LETTER DATED JUNE 30TH DIRECTED THAT THE REPRESENTATION VOTE BE HELD ON JULY 23RD.
3. THE VOTE WAS CONDUCTED ON JULY 23RD IN COMPLIANCE WITH THE ARRANGEMENTS AGREED UPON BY THE PARTIES ON JUNE 8TH. ACCORDING TO THE REPORT OF THE RETURNING OFFICER DATED JULY 23RD, THE NAMES OF 36 PERSONS WERE ON THE REVISED VOTERS' LIST. OF THESE, ONLY 7 PERSONS CAST BALLOTS IN THE VOTE. UPON THE DIRECTION OF THE REGISTRAR THE BALLOT BOX WAS SEALED AND THE BALLOTS WERE NOT COUNTED.
4. BY LETTER DATED JULY 27TH, COUNSEL FOR THE APPLICANT FILED OBJECTIONS TO THE REPORT OF THE RETURNING OFFICER. MORE PARTICULARLY, THE APPLICANT ALLEGES THAT, CONTRARY TO ITS PREVIOUS PRACTICE, THE RESPONDENT DURING THE WEEK IN WHICH THE VOTE WAS TAKEN TRANSFERRED A LARGE PORTION OF ITS REGULAR GREENWOOD STAFF TO THE RACEWAY AT FORT ERIE. THE APPLICANT FURTHER ALLEGES THAT ALTHOUGH THE RESPONDENT POSTED A NOTICE OF THE TAKING OF THE VOTE IN THE AREA OF THE COCKTAIL LOUNGE, NO NOTICE WAS POSTED IN OR NEAR THE LARGER BEVERAGE ROOM WHERE THE GREATER NUMBER OF BARGAINING UNIT EMPLOYEES WORKED. THE APPLICANT ARGUES THAT AS A RESULT OF THE CONDUCT OF THE RESPONDENT A LARGE MAJORITY OF THE ELIGIBLE EMPLOYEES WERE DEPRIVED OF AN OPPORTUNITY TO VOTE. THE APPLICANT ACCORDINGLY SUBMITS THAT A NEW VOTE SHOULD BE HELD AT AN APPROPRIATE TIME TO DETERMINE THE TRUE WISHES OF THE BARGAINING UNIT EMPLOYEES.

5. BY LETTER DATED AUGUST 10TH, 1966, COUNSEL FOR THE RESPONDENT DENIES THE ALLEGATIONS OF THE APPLICANT AND SUBMITS THAT THE VOTE WAS CONDUCTED IN ACCORDANCE WITH THE ARRANGEMENTS AGREED UPON BY THE PARTIES AND IN ACCORDANCE WITH THE BOARD'S USUAL PROCEDURES. MORE SPECIFICALLY, THE RESPONDENT DENIES THAT A LARGE PROPORTION OF THE EMPLOYEES WERE TRANSFERRED TO THE RACEWAY AT FORT ERIE CONTRARY TO ITS PREVIOUS PRACTICE. FURTHER THE RESPONDENT SUBMITS THAT THE ONE NOTICE RECEIVED FROM THE BOARD WAS POSTED ON THE RESPONDENT'S PREMISES AT GREENWOOD IN THE PLACE WHERE THE PARTIES HAD AGREED THE VOTE WAS TO TAKE PLACE.

6. IN LIGHT OF THE ABOVE OBJECTIONS, THE BOARD SET THIS MATTER DOWN FOR HEARING ON SEPTEMBER 29TH, 1966 FOR THE PURPOSE OF ALLOWING THE PARTIES TO ADDUCE EVIDENCE AND MAKE REPRESENTATIONS WITH RESPECT TO THE OBJECTIONS OF THE APPLICANT.

7. THE BOARD ACCEPTS THE FOLLOWING TESTIMONY OF JUNE PUMA, THE GENERAL MANAGER AND COORDINATOR OF ALL THE RACE TRACK OPERATIONS OF THE RESPONDENT. GREENWOOD RACEWAY RE-OPENED ON JULY 18TH FOR THE TROTTING RACES AND WAS IN OPERATION ON JULY 23RD, THE DATE OF THE TAKING OF THE VOTE. THE TROTTING RACES ARE HELD IN THE EVENING. MOST OF THE BARGAINING UNIT EMPLOYEES REPORT FOR WORK JUST PRIOR TO 6:00 P.M. THE HOUR AT WHICH THE COCKTAIL LOUNGE AND BEVERAGE ROOMS OPEN FOR BUSINESS, ALTHOUGH A FEW REPORT AS EARLY AS 4:30. AS WELL, ON JULY 18TH, THE RACEWAY AT FORT ERIE OPENED FOR FLAT RACING, WHICH IS HELD IN THE AFTERNOONS. THAT TRACK WAS IN OPERATION OF THE AFTERNOON OF JULY 23RD. OF THE 36 PERSONS ON THE REVISED VOTERS' LIST, SOME 21 WERE SCHEDULED TO WORK AT GREENWOOD ON JULY 23RD. ANOTHER 13 PERSONS ON THE REVISED VOTERS' LIST HAD BEEN TRANSFERRED TO WORK AT THE FORT ERIE RACEWAY AT THE OPENING OF THE TRACK ON JULY 18TH AND WERE EMPLOYED THERE ON JULY 23RD. NO TRANSFERS WERE MADE DURING THE WEEK COMMENCING ON JULY 18TH. THE COCKTAIL LOUNGES AND BEVERAGE ROOMS AT GREENWOOD AND FORT ERIE WERE STAFFED BY EMPLOYEES WHOSE HOME BASE IS IN THE LOCALITY OF THE TRACK CONCERNED. AS ADDITIONAL EMPLOYEES WERE REQUIRED AT THE FORT ERIE RACEWAY, THE RESPONDENT, FOLLOWING ITS USUAL PRACTICE, TRANSFERRED EMPLOYEES, WHO USUALLY WORKED IN THE TORONTO AREA, TO THE RACEWAY AT FORT ERIE.

8. THE BOARD HAS CAREFULLY CONSIDERED ALL THE CIRCUMSTANCES SURROUNDING THE TAKING OF THE REPRESENTATION VOTE ON JULY 23RD. WE NOTE THAT THE "REGISTRAR'S INSTRUCTIONS REGARDING VOTE" PROVIDES THAT IN SETTING THE TIME DURING WHICH THE POLL IS TO BE OPEN "THE HOURS SHOULD BE SO ARRANGED THAT EVERY ELIGIBLE EMPLOYEE HAS AN OPPORTUNITY TO VOTE DURING HIS NORMAL WORKING HOURS". IN THE INSTANT CASE, ALTHOUGH THE PARTIES AGREED ON THE POLLING HOURS, THE HOURS SELECTED CONTRAVENE THE REGISTRAR'S INSTRUCTIONS AS NOT A SINGLE PERSON WHOSE NAME IS ON THE VOTERS' LIST WAS SCHEDULED TO WORK DURING, PRIOR TO OR IMMEDIATELY AFTER THE TIME WHERE THE POLL WAS OPEN.

9. HAVING REGARD TO THE ABOVE CIRCUMSTANCES AND TAKING INTO ACCOUNT THE FACT THAT ONLY 7 PERSONS ON THE REVISED VOTERS' LIST APPEARED AT THE POLL AND CAST BALLOTS, THE BOARD IS NOT SATISFIED THAT THE BARGAINING UNIT EMPLOYEES WERE GIVEN A SUFFICIENT OPPORTUNITY TO PARTICIPATE IN THE VOTE.

10. THE BOARD ACCORDINGLY DIRECTS THAT THE VOTE HELD ON JULY 23RD, 1966 NOT BE COUNTED AND THAT THE BALLOTS CAST BE DESTROYED.

11. A NEW REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE IN THE BOARD'S DECISION DATED MAY 6TH, 1966. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

12. WE HAVE HAD AN OPPROTUNITY TO READ THE DECISION OF BOARD MEMBER H. F. IRWIN IN THIS MATTER. WE WOULD POINT OUT THAT IN THE SALVATION ARMY GRACE HOSPITAL CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER 1965, P. 539, THE RESPONDENT AGREED IN WRITING TO THE REMOVAL OF THE NAMES FROM THE VOTERS' LIST AND TO AN IMMEDIATE COUNTING OF THE BALLOTS. ONLY AFTER THE BALLOTS WERE COUNTED AND THE RESULT OF THE VOTE WAS KNOWN DID THE RESPONDENT MAKE ANY OBJECTION. IT WAS THE CONDUCT OF THE RESPONDENT WHICH CAUSED THE BOARD TO REFUSE TO ACCEDE TO ITS REQUEST FOR A NEW VOTE, AS THE FOLLOWING EXTRACT FROM THE DECISION SHOWS:

HAVING REGARD TO ALL THE EVIDENCE AND IN PARTICULAR THE FACT THAT THE PARTIES AGREED, IN WRITING, TO THE REMOVAL OF THE NAMES FROM THE VOTERS' LIST AND CONSENTED IN WRITING TO THE IMMEDIATE COUNTING OF THE BALLOTS IN THIS CASE AND ALSO WAIVED ANY OBJECTIONS AS TO THE IRREGULARITY AND SUFFICIENCY OF THE BALLOTING, THE BOARD IS OF THE OPINION THAT THE RESPONDENT CANNOT NOW BE HEARD TO OBJECT TO THE REPRESENTATION VOTE IN THIS MATTER.

THE FACTS OF THE INSTANT CASE ARE CLEARLY DISTINGUISHABLE. THERE HAS BEEN NO AGREEMENT BETWEEN THE PARTIES REGARDING THE REMOVAL OF NAMES FROM THE VOTERS' LIST AND THE BALLOT BOX REMAINS SEALED. THE APPLICANT, MOREOVER, HAS NOT EVEN ARGUED THAT THE NAMES OF ALL THOSE PERSONS WHO WERE NOT SCHEDULED TO WORK DURING VOTING HOURS AND WHO DID NOT CAST BALLOTS SHOULD BE REMOVED FROM THE VOTERS' LIST PURSUANT TO SECTION 7(4) OF THE ACT, ALTHOUGH THAT ARGUMENT WAS OPEN TO IT. RATHER THE SUBMISSION OF THE APPLICANT IS THAT THE POLLING ARRANGEMENTS RESULTED IN A TOTALLY UNREPRESENTATIVE VOTE. THE BASIS OF OUR DECISION TO DIRECT A NEW REPRESENTATION VOTE, UNLIKE THE BASIS OF THE BOARD'S DECISION IN THE SALVATION ARMY GRACE HOSPITAL CASE (SUPRA) IS THAT THE BARGAINING UNIT EMPLOYEES DID NOT HAVE AN ADEQUATE OPPORTUNITY TO CAST BALLOTS IN THE VOTE. WE WOULD MENTION, HOWEVER, THAT IF THE APPLICANT HAD ENTERED INTO THE SAME TYPE OF AGREEMENT AS THE RESPONDENT DID IN THE EARLIER CASE, THE APPLICANT'S POSITION BEFORE THE BOARD WOULD BE QUITE DIFFERENT. WE ACCORDINGLY DO NOT FIND THE CONTRADICTION OR INCONSISTENCY BETWEEN THE DECISIONS IN THE TWO CASES SUGGESTED BY BOARD MEMBER IRWIN.

13. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER H. F. IRWIN: (NOVEMBER 9, 1966).

1. I DISSENT.

2. IN THE SALVATION ARMY GRACE HOSPITAL CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER 1965, P. 539, THE ORIGINAL VOTERS' LIST AGREED UPON BY THE PARTIES CONTAINED THE NAMES OF 66 EMPLOYEES. ON THE TAKING OF THE VOTE HELD ON SEPTEMBER 27TH, 1965, 26 NAMES (39%) WERE REMOVED FROM THE VOTERS' LIST UNDER THE PROVISIONS OF SECTION 7(4) OF THE LABOUR RELATIONS ACT BECAUSE THE EMPLOYEES WERE ABSENT FROM WORK DURING VOTING HOURS ON THE DATE THE VOTE WAS TAKEN. WHEN IT APPEARED TO THE BOARD'S RETURNING OFFICER THAT THE VOTE WOULD HAVE TO BE EXTENDED FOR SEVERAL DAYS IN ORDER TO PERMIT ALL PERSONS ELIGIBLE TO VOTE TO CAST THEIR BALLOTS DURING THEIR WORKING HOURS, THE PARTIES AGREED TO REMOVE AN ADDITIONAL 22 NAMES (33.3%) FROM THE VOTERS' LIST. THE REVISED VOTERS' LIST, AS AGREED TO BY THE PARTIES, CONTAINED THE NAMES OF 18 EMPLOYEES (27%) OF WHICH ONLY 14 EMPLOYEES (21%) CAST THEIR BALLOTS. TEN BALLOTS (15.1%) WERE CAST IN FAVOUR OF THE UNION AND 4 BALLOTS (6.06%) WERE CAST AGAINST THE UNION. ON THE BASIS OF THE 10 BALLOTS MARKED IN FAVOUR OF THE UNION, THE BOARD CERTIFIED THE APPLICANT AS BARGAINING AGENT IN A UNIT COMPRISING APPROXIMATELY 66 EMPLOYEES.

3. IN THE MAJORITY DECISION DATED NOVEMBER 17, 1965, THE BOARD MADE TWO FINDINGS:-

- (1) THE REPRESENTATION VOTE REFLECTS THE TRUE WISHES OF THE MAJORITY OF THE EMPLOYEES. AT PARAGRAPH 17 THE BOARD STATED:-

"THERE IS NO EVIDENCE THAT WOULD INDICATE THAT THE RESPONDENT WAS IN ANY MANNER MISLED OR THAT THE PARTIES COLLUSIVELY ATTEMPTED TO AFFECT THE RESULTS OF THE VOTE. THERE IS ALSO NO EVIDENCE BEFORE US TO INDICATE THAT ANY EMPLOYEE HAD ATTEMPTED TO VOTE AND HAD BEEN REFUSED THE RIGHT TO VOTE OR THAT THE MAJORITY OF THE EMPLOYEES IN THE BARGAINING UNIT WERE DISSATISFIED WITH THE RESULT OF THE REPRESENTATION VOTE. SINCE NO EMPLOYEE SAW FIT TO FILE A STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS WITH RESPECT TO THIS MATTER, THE BOARD IS IMPELLED TO FIND THAT THE REPRESENTATION VOTE REFLECTS THE TRUE WISHES OF THE MAJORITY OF THE EMPLOYEES IN THIS MATTER."

(EMPHASIS ADDED)

- (2) REFUSED TO REVIEW ITS DECISION TO CERTIFY THE APPLICANT UNION. AT PARAGRAPH 18 THE BOARD STATED:-

"HAVING REGARD TO ALL THE EVIDENCE AND IN PARTICULAR THE FACT THAT THE PARTIES AGREED, IN WRITING, TO THE REMOVAL OF THE NAMES FROM THE VOTERS' LIST AND CONSENTED IN

WRITING TO THE IMMEDIATE COUNTING OF THE BALLOTS IN THIS CASE AND ALSO WAIVED ANY OBJECTIONS AS TO THE IRREGULARITY AND SUFFICIENCY OF THE BALLOTING, THE BOARD IS OF THE OPINION THAT THE RESPONDENT CANNOT NOW BE HEARD TO OBJECT TO THE REPRESENTATION VOTE IN THIS MATTER."

(EMPHASIS ADDED)

4. IN MY DISSENTING DECISION I STATED AS FOLLOWS:-

"THIS IS A BARGAINING UNIT OF PART-TIME EMPLOYEES WHO ARE NOT SCHEDULED TO WORK EVERY DAY. THE POLL SHOULD HAVE BEEN KEPT OPEN AT SPECIFIED HOURS FOR SEVERAL DAYS TO ENSURE, AS FAR AS POSSIBLE, THAT ALL EMPLOYEES ELIGIBLE TO VOTE HAD AN OPPORTUNITY TO CAST THEIR BALLOT WHILE AT WORK. THIS IS IN ACCORDANCE WITH THE REGISTRAR'S INSTRUCTIONS REGARDING VOTE, PARAGRAPH 2C. THIS ARRANGEMENT SHOULD HAVE BEEN ADHERED TO BY THE PARTIES WHEN ARRANGING THE HOURS AND DAYS THE POLL WOULD BE OPEN.

IN THE ABOVE CIRCUMSTANCES, I DO NOT CONSIDER THAT THE VOTES CAST REPRESENT THE TRUE WISHES OF THE EMPLOYEES.

I WOULD HAVE DIRECTED THAT A NEW VOTE BE CONDUCTED AND THAT SPECIAL ATTENTION BE GIVEN TO POLLING DAYS AND HOURS SO THAT AS MANY EMPLOYEES AS POSSIBLE WOULD HAVE AN OPPORTUNITY TO VOTE WHILE AT WORK."

5. IN THE INSTANT CASE, THE PARTIES AGREED AT THE MEETING OF THEIR REPRESENTATIVES ON JUNE 8TH AS TO THE NAMES OF THE ELIGIBLE VOTERS AS WELL AS THE NAMES OF THE SCRUTINEERS AND THE WITNESSES FOR THE COUNTING OF THE BALLOTS. IT WAS FURTHER AGREED THAT THE POLL WOULD BE OPEN FROM 10:00 A.M. TO 2:00 P.M. AND WOULD BE LOCATED IN THE BOOT AND BRIDLE LOUNGE AT THE RESPONDENT'S GREENWOOD PREMISES.

6. IN A LETTER ADDRESSED TO THE BOARD AND DATED JULY 27TH, COUNSEL FOR THE APPLICANT STATED THAT THE MAJOR OBJECTIONS WHICH MUST LEAD TO THE TAKING OF A NEW VOTE WERE AS FOLLOWS:-

"1. QUITE CONTRARY TO ITS PREVIOUS PRACTICE, THE RESPONDENT, DURING THE WEEK IN WHICH THE VOTE WAS TAKEN, TRANSFERRED A LARGE PROPORTION OF ITS REGULAR GREENWOOD STAFF TO FORT ERIE, DEPRIVING SUCH EMPLOYEES OF THE OPPORTUNITY TO VOTE.

2. WHILE A NOTICE OF TAKING OF THE VOTE APPEARS TO HAVE BEEN POSTED IN ONE LOUNGE, THERE WAS NO NOTICE POSTED IN OR NEAR THE LARGER BEVERAGE ROOM IN WHICH THE MAJORITY OF THE EMPLOYEES DO THEIR WORK."

7. AFTER CAREFULLY CONSIDERING ALL THE EVIDENCE ADDUCED AT THE HEARING THE BOARD FOUND THAT THE CHARGE OF THE APPLICANT THAT THE RESPONDENT TRANSFERRED EMPLOYEES TO FORT ERIE CONTRARY TO ITS PREVIOUS PRACTICE WAS NOT SUBSTANTIATED. MOREOVER, THERE IS NO EVIDENCE THAT THE MAJORITY OF THE EMPLOYEES ELIGIBLE TO VOTE WERE DEPRIVED OF THE OPPORTUNITY TO DO SO BY THE CONDUCT OF THE RESPONDENT. THE EVIDENCE IS THAT ONLY 13 EMPLOYEES WERE TRANSFERRED TO FORT ERIE. THESE EMPLOYEES WERE TRANSFERRED PRIOR TO JULY 18TH AND STRICTLY IN ACCORDANCE WITH THE PREVIOUS PRACTICE OF THE RESPONDENT.

8. AS TO THE POSTING OF THE NOTICE OF TAKING OF THE VOTE, IT ALSO WAS POSTED STRICTLY IN ACCORDANCE WITH THE AGREEMENT OF THE PARTIES TO POST ONE NOTICE ON THE BULLETIN BOARD AT THE RESPONDENT'S GREENWOOD PREMISES.

9. IT IS CLEAR, THEREFORE, THAT THE MAJOR OBJECTIONS OF THE APPLICANT FOR THE TAKING OF A NEW VOTE ARE COMPLETELY UNSUBSTANTIATED AND MUST FAIL.

10. THE MAJORITY DECISION STATES THAT IT IS DIRECTING A NEW VOTE BECAUSE NOT A SINGLE PERSON WHOSE NAME APPEARED ON THE REVISED VOTERS' LIST OF 36 EMPLOYEES WAS SCHEDULED TO WORK DURING THE FOUR CONTINUOUS HOURS THE POLL WAS OPEN. SEVEN (7) OF THESE EMPLOYEES APPEARED AT THE POLL AND CAST THEIR BALLOTS. THE SAME OPPORTUNITY TO VOTE WAS OPEN TO THE OTHER 16 EMPLOYEES STATIONED AT TORONTO AND SCHEDULED TO REPORT FOR WORK LATER IN THE AFTERNOON. WHEN THE BOARD CONDUCTS THE VOTE DURING THE HOURS AGREED TO BY THE PARTIES SURELY THE PARTIES CANNOT COMPLAIN AFTERWARDS. IT IS NOT THE RESPONSIBILITY OF THE BOARD TO GET THE EMPLOYEES TO THE POLLS.

11. IN VIEW OF THE FACT THAT --

(A) THE PARTIES AGREED IN RESPECT OF:

- (I) THE NAMES OF THE EMPLOYEES IN THE EMPLOY OF THE COMPANY ON MAY 24TH AND THEREBY ELIGIBLE TO VOTE;
- (II) THE VOTE TO BE HELD ON JUNE 15TH OR JUNE 22ND AND WAS SUBSEQUENTLY SET BY THE BOARD TO BE HELD ON JULY 23RD WHEN EMPLOYEES WOULD BE STATIONED AT GREENWOOD RACE TRACK;
- (III) THE POLL WOULD BE OPEN FROM 10:00 A.M. TO 2:00 P.M.;
- (IV) THE POLLING BOOTH TO BE SITUATED IN THE BOOT AND BRIDLE LOUNGE;
- (V) ONE NOTICE TO BE POSTED ON THE BULLETIN BOARD AND WAS SO POSTED;
- (VI) THE NAMES OF THE SCRUTINEERS AND THE WITNESSES FOR COUNTING OF THE BALLOTS;

- (B) THE LARGE MAJORITY OF THE EMPLOYEES ON THE VOTERS' LIST ARE PART-TIME WORKERS, THE SAME AS IN THE SALVATION ARMY GRACE HOSPITAL CASE;
- (C) THE REPRESENTATIVES OF PARTIES SIGNED A CERTIFICATE OF CONDUCT OF ELECTION WHICH READS IN PART AS FOLLOWS:-

"We, THE UNDERSIGNED, ACTED AS SCRUTINEERS FOR THE PARTIES HEREIN IN THE CONDUCT OF THE BALLOTING AT THE TIME AND PLACE ABOVE MENTIONED. WE CERTIFY THAT THE BALLOTING WAS FAIRLY CONDUCTED AND THAT ALL ELIGIBLE VOTERS WERE GIVEN AN OPPORTUNITY TO CAST THEIR BALLOTS IN SECRET, AND THAT THE BALLOT BOX WAS PROTECTED IN THE INTEREST OF A FAIR AND SECRET VOTE."

- (D) AS IN THE SALVATION ARMY GRACE HOSPITAL CASE NONE OF THE EMPLOYEES IN THE BARGAINING UNIT FILED A STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS WITH RESPECT TO THE REPORT OF THE RETURNING OFFICER OR TO THE CONDUCT OF THE REPRESENTATION VOTE;
- (E) THE APPLICANT'S OBJECTIONS TO THE VOTE AND ALLEGED TRANSFER OF A LARGE PROPORTION OF ITS REGULAR GREENWOOD STAFF TO FORT ERIE CONTRARY TO PREVIOUS PRACTICE AND THEREBY DEPRIVING SUCH EMPLOYEES OF THE OPPORTUNITY TO VOTE WERE COMPLETELY UNSUBSTANTIATED;

I WOULD FOLLOW THE POLICY SET BY THE BOARD IN THE SALVATION ARMY GRACE HOSPITAL CASE, SUPRA, AND DIRECT THAT THE NAMES OF THE EMPLOYEES TRANSFERRED TO FORT ERIE AND THOSE STATIONED IN TORONTO AND WHO DID NOT CAST THEIR BALLOTS BE REMOVED FROM THE VOTERS' LIST UNDER THE PROVISIONS OF SECTION 7(4) OF THE LABOUR RELATIONS ACT WHICH READS AS FOLLOWS:-

- (4) IN DETERMINING THE NUMBER OF ELIGIBLE VOTERS FOR THE PURPOSE OF SUBSECTION 3, EMPLOYEES WHO ARE ABSENT FROM WORK DURING VOTING HOURS AND WHO DO NOT CAST THEIR BALLOTS SHALL NOT BE COUNTED AS ELIGIBLE.

I WOULD FURTHER DIRECT THAT THE SEALED BALLOT BOX BE OPENED AND THE BALLOTS THEREIN BE COUNTED UNDER THE SUPERVISION OF THE REGISTRAR IN ACCORDANCE WITH THE BOARD'S RULES OF PROCEDURE.

12. FRANKLY, I AM AT A COMPLETE LOSS TO UNDERSTAND HOW THE BOARD CAN ARRIVE AT TWO DIAMETRICALLY OPPOSED CONCLUSIONS IN THESE TWO CASES WHERE THE MAIN ISSUE WAS THE FACT THAT A LARGE GROUP OF EMPLOYEES IN THE BARGAINING UNIT WERE NOT SCHEDULED TO BE AT WORK DURING THE HOURS THE POLL WAS OPEN. AGREEMENT OF THE PARTIES PER SE AS IN THE SALVATION ARMY GRACE HOSPITAL CASE CANNOT REMEDY THIS DEFICIENCY. IF IT WAS ALL RIGHT

FOR EMPLOYEES IN THAT CASE TO BE DISFRANCHISED, BECAUSE THEY WERE NOT SCHEDULED TO BE AT WORK DURING POLLING HOURS, THIS POLICY IS EQUALLY APPLICABLE IN THE INSTANT CASE. SUCH INCONSISTENCY LEAVES PARTIES TO A VOTE OR APPEARING BEFORE THE BOARD IN COMPLETE CONFUSION AS TO WHAT THE BOARD'S POLICY REALLY IS IN CASES OF THIS KIND.

13. SINCE WRITING THE ABOVE DECISION, I HAVE HAD THE OPPORTUNITY TO READ THE COMMENTS CONCERNING IT AS SET OUT IN PARAGRAPH 12 OF THE MAJORITY DECISION. INSTEAD OF WEAKENING THE REASONS FOR MY DECISION, THESE COMMENTS SHARPLY POINT UP THE CORRECTNESS AND LOGIC OF THEM.

14. THE MAJORITY STATE THAT A NEW VOTE IS BEING ORDERED BECAUSE THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED BY THE BOARD DID NOT HAVE AN ADEQUATE OPPORTUNITY TO CAST BALLOTS IN THE VOTE. THIS IS EXACTLY THE REASONS GIVEN IN MY DISSENT IN THE SALVATION ARMY GRACE HOSPITAL CASE AS TO WHY I WOULD HAVE ORDERED A NEW VOTE. ALTHOUGH THE BOARD IN THAT CASE MADE A FINDING THAT THE REPRESENTATION VOTE REFLECTED THE TRUE WISHES OF THE MAJORITY OF THE EMPLOYEES, IT REFUSED TO ORDER A NEW VOTE BECAUSE OF THE AGREEMENT OF THE PARTIES TO DELETE 48 OF THE 66 NAMES ON THE ELIGIBLE VOTERS' LIST. THE EMPLOYEES CONCERNED WERE NOT CONSULTED BY THE PARTIES AND NEITHER THE APPLICANT UNION NOR THE EMPLOYER HAD ANY AUTHORITY TO REPRESENT THE EMPLOYEES AND TO MAKE A DECISION WHICH DISFRANCHISED THEM. IF THE VOTE WAS NOT REPRESENTATIVE OF THE TRUE WISHES OF THE MAJORITY OF THE EMPLOYEES IN THE BARGAINING UNIT BEFORE THE AGREEMENT WAS MADE, IT REMAINED UNREPRESENTATIVE AFTER THE AGREEMENT OF THE PARTIES TO STRIKE THE NAMES OF 48 ELIGIBLE VOTERS FROM THE VOTERS' LIST. THE AGREEMENT OF THE PARTIES DID NOT RECTIFY THE DEFECT NOR VALIDATE THE REPRESENTATIVENESS OF THE VOTE.

15. IT IS A LONG STANDING POLICY OF THIS BOARD THAT IF THE AGREEMENT OF THE PARTIES IN RESPECT OF ANY MATTER BEFORE IT DOES VIOLATE TO THE BOARD'S ESTABLISHED POLICY OR PROCEDURE, THE AGREEMENT OF THE PARTIES IS NEITHER ACCEPTED NOR ACTED UPON. THE AGREEMENT OF THE PARTIES IN THE SALVATION ARMY GRACE HOSPITAL CASE WAS IN DIRECT CONFLICT TO THE BOARD'S POLICY AS SET OUT IN THE REGISTRAR'S INSTRUCTIONS REGARDING VOTE, PARAGRAPH 2c, THAT THE VOTE SHOULD BE CONDUCTED AT A TIME WHEN ALL ELIGIBLE VOTERS WOULD HAVE AN OPPORTUNITY TO CAST THEIR BALLOTS WHILE AT WORK. THE AGREEMENT OF THE PARTIES, THEREFORE, SHOULD NOT HAVE BEEN ACCEPTED AND VALIDATED BY THE BOARD. IT WAS STILL AN UNREPRESENTATIVE VOTE DESPITE THE AGREEMENT OF THE PARTIES.

16. IF IT WERE NOT FOR THE BOARD'S DECISION IN THE SALVATION ARMY GRACE HOSPITAL CASE, I WOULD UNHESITATINGLY HAVE ORDERED A NEW VOTE IN THE INSTANT CASE. BUT HAVING BEEN TOLD BY MY COLLEAGUES IN THE FORMER CASE THAT WHILE ONLY 18 OUT OF 66 EMPLOYEES REMAINED ON THE REVISED VOTERS' LIST AND ONLY 10 OF THESE EMPLOYEES CAST BALLOTS IN FAVOUR OF THE UNION IT WAS NEVERTHELESS A REPRESENTATIVE VOTE REFLECTING THE TRUE WISHES OF THE MAJORITY OF THE EMPLOYEES. CONSEQUENTLY, I MUST BE CONSISTENT AND APPLY THE SAME POLICY TO THE INSTANT CASE WHERE 7 EMPLOYEES OUT OF A REVISED VOTERS' LIST OF 36 EMPLOYEES CAST THEIR BALLOTS.

11867-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. PARKE, DAVIS & COMPANY LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND D. A. PAGE.

APPEARANCES AT THE HEARING: JOHN B. MASKELL FOR THE APPLICANT, RICHARD V. SANKEY AND DUDLEY S. CLARKE FOR THE RESPONDENT, AND CLAUDE THOMSON AND SHIRLEY HANNIGAN FOR A GROUP OF EMPLOYEES.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER: (NOVEMBER 2, 1966).

1. BY A DECISION DATED AUGUST 25TH, 1966, THE BOARD DETERMINED THE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING IN THIS CASE. IN THE SAME DECISION THE BOARD FOUND THAT VELMA MANLEY AND C. S. ELDRIDGE ARE EACH EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND ARE EXCLUDED FROM THE BARGAINING UNIT.
2. A STATEMENT OF DESIRE, OR PETITION, EXPRESSING OPPOSITION TO THE APPLICATION HEREIN WAS FILED WITH THE BOARD, AND AT A HEARING ON SEPTEMBER 9TH, 1966, THE BOARD MADE INQUIRIES WITH RESPECT TO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITION.
3. MRS. VELMA MANLEY GAVE EVIDENCE IN SUPPORT OF THE PETITION. SHE IS THE PERSON REFERRED TO IN THE BOARD'S DECISION OF AUGUST 25TH, 1966, AND IS SECRETARY TO BRANCH MANAGER P. A. HARE, THE MOST SENIOR OFFICIAL AT THE PLANT. THE PETITION ANTEDATES THE BOARD'S DECISION EXCLUDING HER FROM THE BARGAINING UNIT. MRS. MANLEY'S EVIDENCE IS THAT UNTIL THE NOTICE OF THE APPLICATION WAS POSTED SHE WAS UNAWARE OF THE EXISTENCE OF ANY UNION ACTIVITY IN THE OFFICE. WHEN SHE READ THE NOTICE SHE DISCUSSED THE MATTER WITH OTHER GIRLS IN THE OFFICE, PRINCIPALLY WITH MISS HANNIGAN, AND THE CONCLUSION WAS REACHED THAT THEY SHOULD FILE A PETITION IN OPPOSITION TO THE UNION. MRS. MANLEY TYPED THE PETITION AT HER HOME AND WITNESSED THE SIGNATURES OF ALL SIGNATORIES. THESE SIGNATURES WERE OBTAINED OFF THE COMPANY PREMISES AND OUT OF WORKING HOURS.
4. MR. HARE WAS AWAY AT THE TIME THE NOTICE OF APPLICATION WAS POSTED, BUT WHEN HE RETURNED MRS. MANLEY TOLD HIM THAT SHE AND OTHER EMPLOYEES WERE UPSET ABOUT THE APPLICATION AND THAT SINCE THE BOARD (I.E. THE LABOUR RELATIONS BOARD) ALLOWED THEM TO PROTEST, THAT IS WHAT THEY WERE GOING TO DO. MR. HARE MADE NO COMMENT, THE WITNESS TESTIFIED. THE PETITION HAD NOT BEEN DRAFTED AT THIS TIME.
5. ON JUNE 10TH, PRIOR TO TYPING THE PETITION, MRS. MANLEY APPROACHED MR. CLARKE, THE ASSISTANT MANAGER OF THE PLANT, AND ASKED THAT SINCE SHE COULD NOT GET HELP THROUGH THE COMPANY, WOULD IT BE IN ORDER TO GET THE COMPANY'S LAWYER TO FIND A LAWYER FOR THE GROUP. SUBSEQUENTLY, ONE OF THE SOLICITORS FOR THE COMPANY CALLED MRS. MANLEY TO INQUIRE WHAT SHE WANTED.

SHE TOLD HIM SHE WANTED A LAWYER AND ALSO INQUIRED OF HIM WHAT SECTIONS OF THE ACT SHE SHOULD REFER TO IN DRAFTING THE PETITION. THE SOLICITOR GAVE HER THE SECTIONS OF THE RULES OF PROCEDURE AND OF FORM 5 TO WHICH SHE SHOULD REFER. MRS. MANLEY TESTIFIED THAT THE PREAMBLE TO THE PETITION WAS THE RESULT OF THE INFORMATION SHE OBTAINED FROM THE COMPANY'S SOLICITOR.

6. IT IS CLEAR FROM THE FOREGOING THAT MRS. MANLEY RECEIVED, THROUGH MR. CLARKE, MANAGEMENT'S ASSISTANCE IN THIS MATTER. IT WAS OBVIOUSLY AS THE RESULT OF HER CONVERSATION WITH MR. CLARKE THAT SHE RECEIVED THE CALL FROM THE COMPANY'S SOLICITOR FROM WHOM, AS NOTED ABOVE, SHE OBTAINED THE INFORMATION SHE REQUIRED IN ORDER TO PREPARE THE HEADING AND PREAMBLE TO THE PETITION. IN THESE CIRCUMSTANCES WE CANNOT ACCEPT THE PETITION AS QUALIFYING OR WEAKENING THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS MATTER. (SEE CANADIAN FABRICATED PRODUCTS CASE, 1954 C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 149-154, ¶17,090; C.L.S. 76-465; PEEL BLOCK COMPANY CASE, 63 C.L.L.C. 1154; C.L.S. 76-860; SAPAWA GOLD MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1964, p. 451.

7. IN VIEW OF THE ABOVE, IT BECOMES UNNECESSARY TO GO INTO THE QUESTION AS TO WHAT EFFECT MRS. MANLEY'S POSITION AS PRIVATE SECRETARY TO THE BRANCH MANAGER AND AS A PERSON EXCLUDED FROM THE BARGAINING UNIT BECAUSE OF WORKING IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS MAY HAVE HAD UPON THE EMPLOYEES CONCERNED.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER D. ALAN PAGE: (NOVEMBER 2, 1966).

I DISSENT. THE PROCEDURE FOLLOWED BY THE EMPLOYEE IN PREPARING THE PETITION AND SEEKING ADVICE AS TO THE CORRECT METHOD OF FILING IT IS ILLUSTRATIVE OF THE DIFFICULTIES WHICH CONFRONT EMPLOYEES WHO ARE GENUINELY DESIROUS OF OPPOSING AN APPLICATION FOR CERTIFICATION. LACKING THE SOPHISTICATION OF UNIONS IN THESE MATTERS AND THE LEGAL COUNSEL WHICH IS AVAILABLE TO THEM, IT IS BOTH NATURAL AND UNDERSTANDABLE THAT THEY SHOULD TURN TO THEIR EMPLOYER FOR ADVICE. TO IMPUTE IMPROPER MOTIVES ON THE PART OF THE PETITIONERS OR THE EMPLOYER IN SUCH CASES IS TO DEPRIVE THE EMPLOYEES BY EDICT OF THE RIGHT TO A FREE EXPRESSION OF THEIR WISHES.

I WAS IMPRESSED BY THE DEMEANOR OF THE WITNESS FOR THE PETITIONERS AND THE FRANK MANNER IN WHICH SHE PROVIDED INFORMATION WHICH AN EVASIVE WITNESS COULD HAVE WITHHELD EASILY. COUNSEL FOR THE PETITIONERS VOLUNTARILY FILED WITH THE BOARD A COPY OF HIS CORRESPONDENCE WITH THE WITNESS. THE WITNESS FOR THE EMPLOYER STATED THAT THE COMPANY TOOK A

COMPLETELY NEUTRAL POSITION WITH RESPECT TO THE PROCEEDINGS - ITS SOLE INTEREST WAS TO HAVE THE TRUE WISHES OF ITS EMPLOYEES DETERMINED.

BY NO STRETCH OF THE IMAGINATION COULD IT BE INFERRED THAT ANY ACT OF THE EMPLOYER WOULD BE PREJUDICIAL TO A FREE DETERMINATION OF THE WISHES OF THE EMPLOYEES THROUGH THE MEDIUM OF A SECRET BALLOT. THE DECISION OF THE MAJORITY DEPRIVES THE EMPLOYEES OF THIS RIGHT. IN THE LIGHT OF THESE CIRCUMSTANCES, I WOULD HAVE ORDERED A VOTE OF THE EMPLOYEES.

11949-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE HYDRO-ELECTRIC COMMISSION OF THE TOWNSHIP OF NORTH YORK (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS D. W. FORGIE AND F. W. MURRAY.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, F. KITCHEN AND W. ACTON FOR THE APPLICATION, J. B. GRAY, D. K. WHITE, F. J. McMAHON, E. CAMPBELL AND D. GRAHAM FOR THE RESPONDENT, G. LAKE, C. LEE, L. KEITH AND R. DYER FOR THE OBJECTORS.

DECISION OF J. H. BROWN, VICE-CHAIRMAN, FOR THE MAJORITY AND DISSENTING DECISIONS OF BOARD MEMBERS D. W. FORGIE AND F. W. MURRAY: (NOVEMBER 9, 1966).

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT.
2. THE BOARD HAS CONSIDERED THE REPORT OF THE EXAMINER DATED OCTOBER 19TH, 1966, AND THE STATEMENT OF OBJECTIONS DATED OCTOBER 26TH, 1966 FILED BY THE RESPONDENT IN THIS MATTER.
3. THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PAYMASTER, FIELD INSPECTOR OF CONTRACTS, BUYER, SENIOR TECHNICIANS IN EACH OF THE OVERHEAD, UNDERGROUND AND STATION DESIGN GROUPS, ONE SECRETARY TO EACH OF THE FOLLOWING: GENERAL MANAGER, ASSISTANT GENERAL MANAGER, SECRETARY-TREASURER, SOLICITOR, PERSONNEL MANAGERS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL #11, CANADIAN UNION OF PUBLIC EMPLOYEES EFFECTIVE UNTIL MARCH 31ST, 1967, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES AS CONTAINED IN THE REPORT OF THE EXAMINER THAT MISS M. WILSON, C. KNOWLES, J. WILLIAMS AND S. SMILDE ARE SUPERVISORS AND ARE NOT INCLUDED IN THE BARGAINING UNIT.
5. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT B. DAVIES AND H. GREIG DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE INCLUDED IN THE BARGAINING UNIT.

6. ON THE BASIS OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER THE BOARD DECLARES FOR PURPOSES OF CLARITY THAT D. BOTT, C. MCKINLEY, S. WILMS AND A. MARTIN, ALL OF WHOM ARE CLASSIFIED AS CLERK-TYPISTS, ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE INCLUDED IN THE BARGAINING UNIT.

7. THE BOARD FURTHER DECLARES FOR THE PURPOSES OF CLARITY THAT A. BROCKWELL AND R. DYER WHO ARE CLASSIFIED AS CONSUMER SERVICE REPRESENTATIVES, M. PARKER, S. PARKER, M. DYKE AND E. HENDERSON WHO ARE CLASSIFIED AS SALES REPRESENTATIVES, R. DICK AND J. GOSLIN WHO ARE CLASSIFIED AS TECHNICAL CLERKS, DO NOT EXERCISE MANAGERIAL AUTHORITY WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT.

8. THE BOARD FURTHER DECLARES FOR PURPOSES OF CLARITY THAT W. MUIRHEAD WHO IS CLASSIFIED AS ASSISTANT SUPERVISOR OF DISBURSEMENT ACCOUNTING IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT INCLUDED IN THE BARGAINING UNIT.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER D. W. FORGIE: (NOVEMBER 9, 1966).

I AGREE WITH THE DECISION OF THE MAJORITY EXCEPT IN THE CASE OF W. MUIRHEAD WHO IS CLASSIFIED AS ASSISTANT SUPERVISOR OF DISBURSEMENT ACCOUNTING. ON THE BASIS OF EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER I FIND THAT W. MUIRHEAD IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. ACCORDINGLY, I WOULD INCLUDE HIM IN THE BARGAINING UNIT.

DECISION OF BOARD MEMBER F. W. MURRAY: (NOVEMBER 9, 1966).

I AGREE WITH THE DECISION OF THE MAJORITY EXCEPT WITH RESPECT TO THE CONSUMER SERVICE REPRESENTATIVES AND SALES REPRESENTATIVES. ON THE BASIS OF THE DUTIES AND RESPONSIBILITIES OF A. BROCKWELL, AS CONTAINED IN THE REPORT OF THE EXAMINER (AND WHICH THE PARTIES AGREE APPLIES TO R. DYER) I FIND THAT CONSUMER SERVICE REPRESENTATIVES ARE NOT APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT. FURTHER, HAVING REGARD TO THE EVIDENCE RELATING TO THE DUTIES AND RESPONSIBILITIES OF M. PARKER AND M. DYKE (WHOSE EVIDENCE THE PARTIES AGREE APPLIES TO S. PARKER AND E. HENDERSON) I FIND THAT SALES REPRESENTATIVES ARE NOT APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT.

12020-66-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 12 - L, TORONTO (APPLICANT) v. CROWN CORK & SEAL COMPANY LIMITED (RESPONDENT) v. CROWN CORK & SEAL EMPLOYEES ASSOCIATION (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND D. W. FORGIE.

APPEARANCES AT THE HEARING: L. A. MACLEAN, ROY E. TURNER AND CECIL W. YEO FOR THE APPLICANT, D. CHURCHILL-SMITH AND C. F. FARNELL FOR THE RESPONDENT, W. G. PHELPS, N. TUCK AND T. AUSTIN FOR THE INTERVENER AND THE OBJECTORS.

DECISION OF THE BOARD: (NOVEMBER 28, 1966).

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF CERTAIN PERSONS AND CLASSIFICATIONS WHO WERE IN DISPUTE. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED OCTOBER 31ST, 1966 THE INTERVENER AND THE OBJECTORS, WHO WERE REPRESENTED BY THE SAME SOLICITOR, REQUESTED A HEARING TO MAKE REPRESENTATIONS ON WHAT EFFECT SHOULD BE GIVEN TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER.
2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT
3. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF VAUGHAN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS CAMERAMEN ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.
5. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT PETER LAPLANTE A PERSON CLASSIFIED BY THE RESPONDENT AS COMMERCIAL AND ADVERTISING ARTIST, AND ROBERT FITZGERALD DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.
6. THE EVIDENCE PERTAINING TO THE DUTIES AND RESPONSIBILITIES OF CECIL YEO MAY BE SUMMARIZED AS FOLLOWS. MR. YEO WAS HIRED WHEN HE ANSWERED AN ADVERTISEMENT PLACED IN A NEWSPAPER BY THE RESPONDENT APPROXIMATELY TWO YEARS AGO AND HIS POSITION WITH THE RESPONDENT HAS NOT CHANGED SINCE HE WAS HIRED. THE ADVERTISEMENT READS AS FOLLOWS:

OFFSET LITHO
PLATEMAKER

FOR METAL DECORATING PLANT. EXPERIENCE REQUIRED ON
HI-METAL AND DEEP ETCHED COPPERIZED PLATES WITH
STRIPPING ABILITY AN ASSET.

THIS IS AN OPPORTUNITY FOR THE RIGHT MAN WITH THE
NECESSARY QUALIFICATIONS TO ADVANCE TO SUPERVISORY
POSITION WITH PROGRESSIVE COMPANY.

7. MR. YEO TESTIFIED THAT HE WAS "HIRED AS A PLATE MAKER, A PLATE STRIPPER AND AS A FOREMAN". HE SPENDS OVER SEVENTY-FIVE PER CENT OF HIS TIME ACTUALLY WORKING WITH OTHER EMPLOYEES IN THE BARGAINING UNIT. MR. YEO STATED THAT "HE SUPERVISES FOUR EMPLOYEES TO SOME EXTENT". HE PROGRAMS AND SCHEDULES THE WORK FOR THE MEN. HE IS RESPONSIBLE FOR THE QUALITY OF THE WORK AND THE PERFORMANCE OF THE MEN. HIS RESPONSIBILITY WITH RESPECT TO THE MEN'S PERFORMANCE, HOWEVER, APPEARS TO BE VERY LIMITED. APART FROM CHECKING THEIR WORK HE HAS NO AUTHORITY TO SUSPEND AN EMPLOYEE AND IT IS NOT PART OF HIS DUTY TO REPORT ON EMPLOYEES WORK PERFORMANCE. HOWEVER, AT TIMES, HIS SUPERIOR "CASUALLY ASKS ABOUT SOMEBODY". MR. YEO HAS NEVER HIRED OR FIRED OTHER EMPLOYEES AND HAS NEVER GRANTED TIME OFF TO AN EMPLOYEE ON HIS OWN AUTHORITY ALTHOUGH AT TIMES HE ACTS AS A CONDUIT BETWEEN THE MEN AND HIGHER AUTHORITY. MR. YEO PUNCHES A TIME CLOCK, IS HOURLY RATED, AND IS PAID FOR OVERTIME AS ARE THE OTHER MEN IN THE BARGAINING UNIT. MR. YEO HAS NEVER ATTENDED COMPANY POLICY MEETINGS.

8. WHILE MR. YEO APPEARS TO HAVE CERTAIN SUPERVISORY FUNCTIONS IN LIMITED AND PREDETERMINED AREAS, SUCH FUNCTIONS APPEAR TO BE INCIDENTAL TO HIS MAIN FUNCTIONS AS AN "OFFSET LITHO PLATE MAKER" WHICH IS THE JOB HE WAS HIRED TO FULFIL IN ACCORDANCE WITH THE ADVERTISEMENT REFERRED TO ABOVE. BECAUSE HIS JOB HAS NOT CHANGED SINCE HE COMMENCED HIS EMPLOYMENT WITH THE RESPONDENT IT IS APPARENT THAT HE HAS NOT YET "ADVANCED" TO THE SUPERVISORY POSITION REFERRED TO IN THE ADVERTISEMENT.

9. IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, DATED SEPTEMBER 14TH, 1966, BOARD FILE NO. 10775-65-R, THE BOARD STATED AS FOLLOWS:-

MOST OF THE PERSONS IN DISPUTE HAVE MORE THAN ONE FUNCTION AND GENERALLY SPEAKING IT IS THE WEIGHT OR EMPHASIS ATTACHED TO THE DIFFERENT FUNCTIONS WHICH MUST DETERMINE ON WHICH SIDE OF THE MANAGERIAL LINE THAT THE PERSON FALL. SENIOR OR SKILLED EMPLOYEES OFTEN HAVE MORE RESPONSIBILITIES THAN OTHER RANK AND FILE EMPLOYEES AND THEY EXERCISE CERTAIN CONTROL AND DIRECTION OVER THE OTHER EMPLOYEES BECAUSE OF THEIR GREATER EXPERIENCE AND SKILL. IT IS THE BOARD'S DIFFICULT TASK TO DETERMINE WHETHER THE ADDITIONAL RESPONSIBILITIES ARE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(b) OF THE ACT OR ARE MERELY INCIDENTAL TO THE

PRIME PURPOSE FOR WHICH THE EMPLOYEE IS ENGAGED (I.E. TO PERFORM WORK PROPERLY PERFORMED BY PERSONS WITHIN THE BARGAINING UNIT). IF THE MAJORITY OF A PERSON'S TIME IS OCCUPIED BY WORK SIMILAR TO THAT PERFORMED BY EMPLOYEES WITHIN THE BARGAINING UNIT AND SUCH PERSON HAS NO EFFECTIVE CONTROL OR AUTHORITY OVER THE EMPLOYEES IN THE BARGAINING UNIT BUT IS MERELY A CONDUIT CARRYING ORDERS OR INSTRUCTIONS FROM MANAGEMENT TO THE EMPLOYEES, THE PERSON CANNOT BE SAID TO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. ON THE OTHER HAND, IF A PERSON IS PRIMARILY ENGAGED IN SUPERVISION AND DIRECTION OF OTHER EMPLOYEES AND HAS EFFECTIVE CONTROL OVER THEIR EMPLOYMENT RELATIONSHIP, EVEN THOUGH THE PERSON OCCASIONALLY PERFORMS WORK SIMILAR TO THE RANK AND FILE EMPLOYEES WHEN AN EMERGENCY ARISES OR TO RELIEVE AN EMPLOYEE DURING OCCASIONAL PERIODS OF ABSENCE OR EVEN TO PERFORM A PARTICULARLY IMPORTANT JOB REQUIRING SPECIAL SKILL AND EXPERIENCE, SUCH OCCASIONAL WORK IN NO WAY DEROGATES FROM HIS PRIME FUNCTION AS A PERSON EMPLOYED IN A MANAGERIAL CAPACITY. WHEN ASSESSING A PERSON'S DUTIES AND RESPONSIBILITIES THE BOARD DOES NOT LOOK AT ANY ONE FUNCTION IN ISOLATION BUT VIEWS ALL FUNCTIONS IN THEIR ENTIRETY. AS STATED IN THE [LOCAL 2890, UNITED STEEL WORKERS OF AMERICA V. THE R. McDOUGALL COMPANY LIMITED CASE 1943 O.W.N. 743], TITLES ALONE ARE NOT OF MUCH ASSISTANCE IN DETERMINING WHAT A PERSON'S FUNCTIONS REALLY ARE.

WHILE THE CASES CITED ABOVE WOULD SEEM TO INDICATE THAT WHILE A PERSON MAY HAVE MINOR SUPERVISORY FUNCTIONS OR VERY LIMITED CONFIDENTIAL FUNCTIONS IN MATTERS RELATING TO LABOUR RELATIONS, IF SUCH FUNCTIONS ARE MERELY INCIDENTAL TO THEIR MAIN FUNCTION AND ARE OF SUCH A NATURE THAT THEY CANNOT BE SAID TO MATERIALLY EFFECT THE EMPLOYMENT RELATIONSHIP OF THE RESPONDENT'S EMPLOYEES, SUCH PERSONS SHOULD NOT BE EXCLUDED FROM COLLECTIVE BARGAINING BY REASON OF SECTION 1(3)(B) OF THE ACT. UNLESS A PERSON WHO REGULARLY PERFORMS WORK SIMILAR TO PERSONS IN A BARGAINING UNIT HAS INDEPENDENT DISCRETIONARY POWERS RATHER THAN MERELY INCIDENTAL REPORTING FUNCTIONS WHICH ARE SUBJECT TO THE DISCRETION AND AUTHORITY OF HIGHER PERSONS IN MANAGEMENT, THERE IS NO REASON TO EXCLUDE SUCH A PERSON FROM COLLECTIVE BARGAINING.

SIMILAR CRITERIA APPLY TO PERSONS ALLEGED TO BE EMPLOYED IN CONFIDENTIAL CAPACITIES IN MATTERS RELATING TO LABOUR RELATIONS. A PERSON TO BE EXCLUDED UNDER THIS PROVISION MUST BE "EMPLOYED IN A CONFIDENTIAL CAPACITY"

I.E., SUCH CAPACITY MUST BE PART OF HIS REGULAR DUTIES. AN ACCIDENTAL OR ISOLATED INVOLVEMENT IN SOME ASPECT OF LABOUR RELATIONS IS NOT SUFFICIENT, IN OUR VIEW, TO EXCLUDE A PERSON FROM COLLECTIVE BARGAINING. HOWEVER, A REGULAR MATERIAL INVOLVEMENT IN MATTERS RELATING TO LABOUR RELATIONS WHICH ARE CONFIDENTIAL BECAUSE THEIR DISCLOSURE WOULD ADVERSELY AFFECT THE INTEREST OF THE EMPLOYER WOULD EXCLUDE A PERSON PURSUANT TO THE PROVISIONS OF SECTION 1(3)(B) OF THE ACT. AS CAN READILY BE SEEN, THE DEGREE OF INVOLVEMENT AND THE EXTENT OF THE CONFIDENTIAL NATURE OF THE MATTERS DEALT WITH BECOME IMPORTANT FACTORS TO BE CONSIDERED IN DETERMINING EXCLUSIONS UNDER THESE PROVISIONS.

10. IN ADDITION, THE BOARD TAKES OFFICIAL NOTICE OF THE FACT THAT IT IS THE USUAL PRACTICE OF THE BOARD TO INCLUDE "WORKING FOREMEN" IN THE CRAFT BARGAINING UNITS REPRESENTED BY THE APPLICANT AND THAT THE APPLICANT CUSTOMARILY BARGAINS FOR WORKING FOREMEN.

11. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE EVIDENCE PERTAINING TO MR. YEO IS REPRESENTATIVE OF FRANK BILLER AND JOHN HARDY.

12. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO AND THE CRITERIA OF MANAGEMENT FUNCTIONS ENUMERATED BY THE BOARD IN THE FALCONBRIDGE CASE REFERRED TO ABOVE, FOR THE PURPOSES OF CLARITY, THE BOARD FURTHER DECLARES THAT CECIL YEO, FRANK BILLER AND JOHN HARDY PERSONS CLASSIFIED BY THE RESPONDENT AS FOREMEN IN THE PLATE ROOM, PRESS ROOM, AND ART AND CAMERA DEPARTMENTS RESPECTIVELY, ARE WORKING FOREMEN AND DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE INCLUDED IN THE BARGAINING UNIT.

13. AT THE FIRST HEARING HELD ON AUGUST 23RD, 1966, THE SOLICITOR FOR THE GROUP OF EMPLOYEES IN THIS MATTER MADE ALLEGATIONS CONCERNING THE ACTIVITIES OF MR. YEO WITH RESPECT TO HIS SUPPORT OF THE APPLICANT'S ORGANIZING CAMPAIGN. THE SOLICITOR FOR THE INTERVENER AND GROUP OF EMPLOYEES WAS GIVEN AN OPPORTUNITY AT THE HEARING TO GIVE FULL PARTICULARS OF ALL THE ALLEGATIONS HIS CLIENTS WISHED TO MAKE AND NO RULING WAS MADE AT THAT HEARING WITH RESPECT TO THE TIMELINESS OF THE ALLEGATIONS. THE SOLICITOR FOR THE GROUP OF EMPLOYEES ADVISED THE BOARD THAT WHILE THE GROUP OF EMPLOYEES HAD KNOWLEDGE OF MR. YEO'S PARTICIPATION IN THE APPLICANT'S CAMPAIGN IT HAD COME TO THEIR ATTENTION FOR THE FIRST TIME AT THE HEARING THAT MR. YEO MIGHT BE EXCLUDED FROM THE BARGAINING UNIT BECAUSE HE WAS A FOREMAN. IT WAS ALLEGED THAT BECAUSE OF MR. YEO'S STATUS WITH THE RESPONDENT COMPANY THE APPLICATION SHOULD BE DISMISSED BECAUSE OF THE PARTICIPATION OF MR. YEO IN THE APPLICANT'S ORGANIZING CAMPAIGN. SINCE THE BOARD HAS FOUND THAT MR. YEO DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT, SUCH FINDING WOULD APPEAR TO DISPOSE OF THE ALLEGATIONS MADE BY THE SOLICITOR FOR THE GROUP OF EMPLOYEES. IT IS THEREFORE UNNECESSARY FOR THE BOARD TO RULE ON THE

TIMELINESS OF THE ALLEGATIONS MADE ON BEHALF OF THE GROUP OF EMPLOYEES AT THE FIRST HEARING.

14. IN ORDER TO PROVIDE THE PARTIES WITH FULL OPPORTUNITY TO MAKE REPRESENTATIONS WITH RESPECT TO ANY OUTSTANDING ISSUE IN LIGHT OF THE BOARD'S FINDINGS AS SET OUT ABOVE, THE BOARD DIRECTS ANY PARTY WHO WISHES TO MAKE SUCH REPRESENTATIONS TO DO SO IN WRITING ON OR BEFORE WEDNESDAY, THE 7TH DAY OF DECEMBER 1966. THE BOARD WILL DISPOSE OF THIS MATTER SUBJECT TO ANY SUCH REPRESENTATIONS THE PARTIES MAY WISH TO MAKE.

12090-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CREATIVE DISPLAY ADVERTISING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: LORNE INGLE, LEO BARTOCCHI AND OTTO URBANOVICS FOR THE APPLICANT, B. W. BINNING, V. DEVITA AND E. PAPAS FOR THE RESPONDENT, AND M. C. DILLON FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (NOVEMBER 28, 1966).

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
3. THERE WAS SUBMITTED TO THE BOARD, IN OPPOSITION TO THIS APPLICATION, A "PETITION" SIGNED BY A NUMBER OF EMPLOYEES OF THE RESPONDENT, SOME OF WHOM WERE PERSONS FOR WHOM THE APPLICANT HAD SUBMITTED EVIDENCE OF MEMBERSHIP. EVIDENCE WITH RESPECT TO THE ORIGIN-ATION AND CIRCULATION OF THIS DOCUMENT WAS GIVEN BY MR. TONY JOSEVSKI, AN EMPLOYEE OF THE RESPONDENT.
4. THE APPLICANT MADE CERTAIN ALLEGATIONS TO THE EFFECT THAT THE RESPONDENT HAD ASSISTED IN THE PREPARATION AND CIRCULATION OF A PETITION IN OPPOSITION TO THE APPLICATION. THE EVIDENCE IN SUPPORT OF THESE ALLEGATIONS DOES ESTABLISH THAT CERTAIN OFFICERS OF THE RESPONDENT DID ENCOURAGE THE PREPARATION AND CIRCULATION OF SUCH A DOCUMENT. EXCEPT AS NOTED BELOW, HOWEVER, THE EVIDENCE DOES NOT RELATE THIS ACTIVITY TO THE DOCUMENT WHICH WAS SUBMITTED TO THE BOARD IN OBJECTION TO THIS APPLICATION.
5. THE EVIDENCE FURTHER ESTABLISHES THAT GERALD PAQUETTE, WHO HAS BEEN FOUND NOT TO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT (SEE THE ENDORSEMENT OF THE RECORD IN THIS

MATTER, DATED OCTOBER 18TH, 1966), WAS ASSOCIATED WITH OFFICERS OF THE RESPONDENT IN OPPOSING THIS APPLICATION, AND THAT MR. PAQUETTE WAS REGARDED BY THE EMPLOYEES AS BEING A MEMBER OF MANAGEMENT AND HAVING AUTHORITY TO AFFECT THEIR EMPLOYMENT STATUS.

6. MR. JOSEVSKI, IN HIS EVIDENCE, STATED THAT THE IDEA FOR THE PREPARATION OF THE DOCUMENT WAS HIS OWN, ALTHOUGH ANOTHER EMPLOYEE ASSISTED HIM IN ITS ACTUAL PREPARATION. AFTER MR. JOSEVSKI HAD OBTAINED APPROXIMATELY 16 SIGNATURES TO THE PETITION, HE SOUGHT ASSISTANCE OF MR. PAQUETTE. MR. PAQUETTE TOLD JOSEVSKI THE PETITION WAS "O.K.", BUT DID NOT, ACCORDING TO JOSEVSKI, GIVE HIM ANY OTHER HELP. JOSEVSKI QUALIFIED THIS BY STATING THAT PAQUETTE DID GIVE HIM THE ADDRESS OF ANOTHER EMPLOYEE, AND LATER, BY STATING THAT MR. PAQUETTE HAD SPOKEN TO ONE OF THE EMPLOYEES WHOSE SIGNATURE JOSEVSKI LATER OBTAINED.

7. THE EVIDENCE OF OTHER WITNESSES, HOWEVER, ESTABLISHES THAT PAQUETTE DID TAKE AN ACTIVE PART IN ENCOURAGING EMPLOYEES TO SIGN THE PETITION. IN COMPANY WITH ANOTHER EMPLOYEE, LUIGI ACCOGLI, PAQUETTE WENT TO THE HOME OF TWO OTHER EMPLOYEES, ANTONIO AND PASQUALE MONGILLO, SHORTLY AFTER ACCOGLI, THEN ACCOMPANIED BY JOSEVSKI, HAD BEEN THERE, IN AN ATTEMPT TO OBTAIN THEIR SIGNATURES TO THE PETITION. ON ANOTHER OCCASION, PAQUETTE SPOKE TO ANOTHER EMPLOYEE, DONALD BLAND, URGING HIM TO SIGN THE PETITION, AND PROMISING THAT THE COMPANY WOULD INCREASE WAGES AND BRING BACK A PROFIT SHARING PLAN IF THE UNION WERE DEFEATED. PAQUETTE MADE THESE PROMISES TO BLAND AT AN EARLY-MORNING MEETING AT A RESTAURANT, WHICH PAQUETTE HAD REQUESTED. HE ADVISED BLAND THAT JOSEVSKI WOULD BE IN SOON WITH THE PETITION IF BLAND WISHED TO SIGN. JOSEVSKI ARRIVED SHORTLY THEREAFTER, ALTHOUGH HE DID NOT JOIN BLAND AND PAQUETTE. THIS WAS BEFORE THE TIME, ACCORDING TO JOSEVSKI'S EVIDENCE, THAT JOSEVSKI SOUGHT PAQUETTE'S ADVICE WITH RESPECT TO THE PETITION.

8. HAVING REGARD TO ALL OF THE EVIDENCE, THE BOARD IS NOT SATISFIED THAT THE PETITION CIRCULATED IN OPPOSITION TO THE APPLICATION SUFFICIENTLY WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO LEAD THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12234-66-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. W. FORGIE.

APPEARANCES AT THE HEARING: THOMAS L. REES, PAUL DOUGET AND CLIFFORD EVANS FOR THE APPLICANT, AND M. N. MACIVER AND H. J. GILES FOR THE RESPONDENT.

DECISION OF THE BOARD: (NOVEMBER 30, 1966).

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT PROPOSED TO EXCLUDE FROM A BARGAINING UNIT, OTHERWISE COMPRISING ALL EMPLOYEES, STORE MANAGERS AND PERSONS ABOVE THE RANK OF STORE MANAGER. THE RESPONDENT COUNTERED WITH A SIMILAR UNIT, BUT PROPOSED EXCLUSION OF DEPARTMENT MANAGERS AND PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER. IN THE FACE OF THIS DISAGREEMENT, FOUNDED AS IT WAS ON A DIFFERENCE OF OPINION AS TO WHETHER DEPARTMENT MANAGERS EXERCISED MANAGERIAL FUNCTIONS, THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT UPON THE DUTIES AND RESPONSIBILITIES OF THOSE PERSONS WHOM THE RESPONDENT SOUGHT TO EXCLUDE.

3. PRIOR TO THE DATE SET FOR THE EXAMINER TO COMMENCE HIS INQUIRY, THE PARTIES SUBMITTED TO THE BOARD, OVER THE SIGNATURES OF THEIR RESPECTIVE REPRESENTATIVES, THE FOLLOWING AGREEMENT, DATED NOVEMBER 17TH, 1966:

DEAR MR. BRUNSKILL:

PLEASE BE ADVISED THAT THE PARTIES HERETO HAVE AGREED THAT THE BARGAINING UNIT IN THE ABOVE MATTER SHALL BE AS FOLLOWS:

"ALL EMPLOYEES OF THE RESPONDENT IN THE OTTAWA ZONE OF THE QUEBEC DIVISION COVERING THE CITIES OF OTTAWA AND EASTVIEW, THE TOWNSHIP OF NEPEAN AND THE VILLAGE OF PETAWAWA, SAVE AND EXCEPT THE STORE MANAGER AND ONE DEPARTMENT MANAGER PER STORE AND PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER."

YOURS VERY TRULY,

FOR THE RESPONDENT: "M. N. MACIVER"
MALCOLM N. MACIVER

FOR THE APPLICANT: "CLIFFORD EVANS"
CLIFFORD EVANS

4. HAVING REGARD TO THE SIGNED AGREEMENT OF THE PARTIES AND SINCE IT SEEMS REASONABLE TO CONCLUDE, IN LIGHT OF THAT AGREEMENT, THAT THE SCOPE CLAUSE IN ANY COLLECTIVE AGREEMENT REACHED BY THE PARTIES IS ENTIRELY LIKELY TO BE COUCHED IN SUCH LANGUAGE, AND FURTHER ON THE UNDERSTANDING THAT ONE DEPARTMENT MANAGER PER STORE WILL BE DESIGNATED FORTHWITH, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE OTTAWA ZONE OF THE QUEBEC DIVISION COVERING THE CITIES OF OTTAWA AND EASTVIEW, THE

TOWNSHIP OF NEPEAN AND THE VILLAGE OF PETAWAWA, SAVE AND EXCEPT THE STORE MANAGER AND ONE DESIGNATED DEPARTMENT MANAGER PER STORE AND PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12261-66-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. BERGMAN & NELSON LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q. C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

DECISION OF THE BOARD: (NOVEMBER 3, 1966).

1. THE APPLICANT FILED TWO CERTIFICATES OF MEMBERSHIP. THE CERTIFICATES ARE SIGNED BY THE MEMBERS AND INDICATE THAT MONTHLY DUES OF \$5.00 HAVE BEEN PAID FOR AT LEAST ONE MONTH WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE CERTIFICATES ARE CHECKED AND CERTIFIED CORRECT BY AN OFFICER OF THE APPLICANT. THE APPLICANT ALSO FILED FOUR COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THE COMBINATION APPLICATIONS FOR MEMBERSHIP ARE SIGNED BY THE EMPLOYEES AND THE RECEIPTS ARE COUNTERSIGNED AND INDICATE THAT A PAYMENT OF AT LEAST \$1.00 HAS BEEN MADE WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE MONEY WAS COLLECTED BY ONE PERSON. THE APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

2. THE RESPONDENT FILED A REPLY, A LIST OF EMPLOYEES CONTAINING TWELVE NAMES AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT.

4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

5. THE RESPONDENT, A GENERAL CONTRACTOR, EMPLOYS CARPENTERS, TRUCK DRIVERS, LABOURERS AND CEMENT FINISHERS. HE SUBLETS ALL WORK INVOLVING MECHANICAL TRADES. THE RESPONDENT'S CARPENTERS ARE ALREADY COVERED BY A

COLLECTIVE AGREEMENT. THERE IS NO EVIDENCE BEFORE THE BOARD OF ORGANIZATION BY UNIONS REPRESENTING LABOURERS, TRUCK DRIVERS OR CEMENT FINISHERS IN THE AREA INVOLVED IN THIS APPLICATION AND THEREFORE NO EVIDENCE BEFORE THE BOARD THAT THE GRANTING OF AN ALL EMPLOYEE UNIT WOULD LEAD TO A JURISDICTIONAL DISPUTE. IN THESE CIRCUMSTANCES, THEREFORE, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND EMPLOYEES COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND APPLICANT, DATED JULY 20, 1966, AND BETWEEN THE RESPONDENT AND LOCAL UNION 1669, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, WHICH WAS RENEWED ON AUGUST 2, 1966, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT PERSONS WORKING IN THE YARD ARE NOT INCLUDED IN THE BARGAINING UNIT BECAUSE THIS IS AN APPLICATION UNDER SECTION 92 OF THE ACT AND PERSONS WORKING IN THE YARD ARE NOT WORKING "AT THE SITE" WITHIN THE MEANING OF SECTION 1(1)(DA) OF THE ACT.

THE BOARD IS UNABLE TO SAY AT THIS TIME WHETHER TRUCK DRIVERS ARE INCLUDED IN THE BARGAINING UNIT BECAUSE THERE IS NO EVIDENCE BEFORE THE BOARD AS TO THE TYPE OF WORK PERFORMED BY THE TRUCK DRIVERS. THE ATTENTION OF THE PARTIES IS DIRECTED TO THE BOARD'S DECISION DATED NOVEMBER 23, 1964, IN CEDARHURST PAVING CO. LIMITED, MONTHLY REPORT, ONTARIO LABOUR RELATIONS BOARD, DECEMBER 1964, P. 442.

THE BOARD FINDS THAT D. CATHCART AND L. KONOBY ARE NOT CARPENTERS' APPRENTICES SINCE THEY ARE NOT INDENTURED. CATHCART AND KONOBY ARE THEREFORE INCLUDED IN THE BARGAINING UNIT.

ALTHOUGH W. S. CLARK IS A LABOURER AND THEREFORE WHEN AT WORK ON JOB SITES WOULD BE INCLUDED IN THE BARGAINING UNIT, HE WAS NOT SO INCLUDED FOR THE PURPOSE OF THE COUNT BECAUSE ON THE DATE OF THE MAKING OF THE APPLICATION HE WAS WORKING AT THE RESPONDENT'S YARD.

6. HAVING REGARD TO THE ABOVE FINDINGS AND TO THE SUBMISSIONS OF THE PARTIES AS CONTAINED IN PARAGRAPHS #19 AND #20 OF THE REPORT OF THE EXAMINER, DATED OCTOBER 25, 1966, THERE WOULD BE EIGHT PERSONS IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION. EVEN IF TRUCK DRIVERS OUGHT TO BE ADDED TO THIS LIST, THIS WOULD INCREASE THE LIST BY ONLY ONE, NAMELY, CLARENCE CARLSON, SINCE IT IS CLEAR THAT THE OTHER TWO PERSONS CLASSED AS TRUCK DRIVERS, HAROLD DEMERIA AND CECIL TEW, WERE WORKING AT THE COMPANY YARD ON THE DATE OF THE MAKING OF THE APPLICATION.

FIVE OF THE NAMES APPEARING ON FOUR COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS AND TWO CERTIFICATES OF MEMBERSHIP CORRESPOND TO THE NAMES OF THE EIGHT OR NINE PERSONS WHOM THE BOARD HAS FOUND TO BE IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12292-66-R: LOCAL UNION 46, THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) v. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: L. C. ARNOLD, W. WEATHERUP AND D. CLARK FOR THE APPLICANT, AND F. G. HAMILTON, W. H. BARNES AND J. WALKER FOR THE RESPONDENT.

1. THE NAME "TORONTO DIVISION OF LOCAL UNION 46-THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE APPLICANT IS AMENDED TO READ: "LOCAL UNION 46, THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA". THE NAME "HYDRO ELECTRIC POWER COMMISSION OF ONTARIO" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO".

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

4. IN THIS APPLICATION LOCAL UNION 46 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (HEREINAFTER REFERRED TO AS "LOCAL 46") SEEKS TO BE CERTIFIED AS BARGAINING AGENT FOR JOURNEYMEN, HELPER AND APPRENTICE PLUMBERS, PIPEFITTERS, STEAMFITTERS AND PIPEWELDERS (HEREINAFTER COLLECTIVELY REFERRED TO AS PLUMBERS) EMPLOYED BY THE CONSTRUCTION DIVISION OF THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (HEREINAFTER REFERRED TO AS "H.E.P.C.") IN BOARD AREA No. 8, THAT IS, WITHIN A TWENTY-FIVE MILE RADIUS OF TORONTO CITY HALL PLUS CERTAIN ADJOINING AREAS. THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE REFERRED TO BY THE H.E.P.C. AS "TEMPORARY" EMPLOYEES (EVEN THOUGH SOME HAVE BUILT UP CONSIDERABLE SENIORITY) AS DISTINCT FROM OTHER EMPLOYEES WHO ARE REGARDED AS "REGULAR" EMPLOYEES BUT AMONG WHOM, INCIDENTALLY,

ARE TO BE FOUND PLUMBERS. THE "REGULAR" EMPLOYEES ARE REPRESENTED BY ANOTHER TRADE UNION FOR COLLECTIVE BARGAINING PURPOSES.

5. THE H.E.P.C., WHOSE MAIN FUNCTION IS THE GENERATION, DISTRIBUTION AND SALE OF ELECTRICAL ENERGY, ALSO ENGAGES IN CONSTRUCTION WORK AS AN OWNER-BUILDER AND IN THIS CAPACITY OPERATES A CONSTRUCTION DIVISION. THE EMPLOYEES AFFECTED BY THIS APPLICATION, AS WELL AS MANY OTHER "TEMPORARY" TRADESMEN AND "REGULAR" TRADESMEN, FORM THE CONSTRUCTION FIELD FORCES OF THE DIVISION. AT THE PRESENT TIME THE EMPLOYEES AFFECTED BY THIS APPLICATION, ALONG WITH MANY OTHER TRADESMEN, ARE ENGAGED ON CONSTRUCTION OF A THERMAL GENERATING STATION AT LAKEVIEW, A THERMAL NUCLEAR GENERATING STATION AT FAIRPORT, AND ADDED FACILITIES TO THE R. L. HEARN GENERATING STATION AT TORONTO. THE PLUMBERS WITH WHICH WE ARE HERE CONCERNED ARE PRESENTLY REPRESENTED FOR COLLECTIVE BARGAINING PURPOSES BY THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (HEREINAFTER REFERRED TO AS THE "UNITED ASSOCIATION"), THE PARENT UNION OF THE APPLICANT, LOCAL 46.

6. IT IS CONVENIENT AT THIS POINT TO ADVERT BRIEFLY TO THE HISTORY OF COLLECTIVE BARGAINING AMONG THE EMPLOYEES OF THE H.E.P.C.'S CONSTRUCTION DIVISION. SINCE THE EARLY 1950'S BARGAINING HAS BEEN CONDUCTED ON A PROVINCE-WIDE BASIS WITH AN EMPLOYEES' ASSOCIATION (WHICH LATER BECAME PART OF THE CANADIAN UNION OF PUBLIC EMPLOYEES) REPRESENTING "REGULAR" EMPLOYEES AND, SINCE 1954, A COUNCIL OF TRADE UNIONS, THE ALLIED CONSTRUCTION CONSTRUCTION COUNCIL, REPRESENTING THE "TEMPORARY" EMPLOYEES. RENEWALS OF THE AGREEMENT WITH THE ALLIED CONSTRUCTION COUNCIL WERE MADE IN 1954, 1955, 1957, 1958, 1959, 1961, 1962 AND 1963. IN THE LAST-MENTIONED YEAR THE UNITED ASSOCIATION, WHICH HAD HITHERTO BEEN PART OF THE ALLIED CONSTRUCTION COUNCIL, BROKE AWAY FROM THE COUNCIL AND NEGOTIATED A SEPARATE AGREEMENT COVERING ALL TEMPORARY PLUMBERS IN THE CONSTRUCTION DIVISION OF THE H.E.P.C. ON A PROVINCE-WIDE BASIS. IT ALSO APPEARS THAT THE OFFICE EMPLOYEES' INTERNATIONAL UNION NEGOTIATED AN AGREEMENT SEPARATE AND APART FROM THE ALLIED CONSTRUCTION COUNCIL COVERING TEMPORARY CLERICAL EMPLOYEES IN THE H.E.P.C. CONSTRUCTION DIVISION, AGAIN, HOWEVER, ON A PROVINCE-WIDE BASIS. IT IS NOT CLEAR FROM THE EVIDENCE WHEN THIS LAST MENTIONED UNION SEPARATED FROM THE ALLIED CONSTRUCTION COUNCIL.

7. FROM 1953 TO 1963 IN NEGOTIATING THE AGREEMENTS DESCRIBED ABOVE IT WAS NECESSARY FOR THE PARTIES TO SEEK CONCILIATION ON ONLY ONE OCCASION AND AT NO TIME DID THE RENEGOTIATION OF THE AGREEMENTS LEAD TO STRIKE ACTION. DURING THE SAME PERIOD THERE WERE NO MAJOR JURISDICTIONAL DISPUTES ALTHOUGH, SINCE THAT TIME, SOME DISPUTES OF THIS NATURE HAVE OCCURRED RESULTING IN WORK STOPPAGES.

8. THE COLLECTIVE AGREEMENT WITH THE ALLIED CONSTRUCTION COUNCIL, REPRESENTING AT DIFFERENT TIMES APPROXIMATELY 14 TO 17 PARENT TRADE UNIONS, HAS TAKEN THE FORM OF A MASTER AGREEMENT WITH AN APPENDIX COVERING LINE CAMPS AND INDIVIDUAL APPENDICES COVERING SPECIAL PROJECTS REQUIRING MORE THAN ONE YEAR TO COMPLETE AND ON WHICH MORE THAN ONE HUNDRED MEN WOULD BE EMPLOYED AT ANY TIME, AS FOR EXAMPLE, THE PICKERING AND LAKEVIEW PROJECTS.

9. ABOUT ONE BILLION DOLLARS¹ WORTH OF CONSTRUCTION WORK HAS BEEN UNDERTAKEN AND COMPLETED UNDER THE PROVINCE-WIDE BARGAINING DESCRIBED ABOVE. THIS INCLUDES SOME 15 SPECIAL PROJECTS AND SOME 4000 MILES OF LINE AND STATION CONSTRUCTION. UP TO THE PRESENT TIME APPROXIMATELY 100,000 EMPLOYEES HAVE BEEN COVERED BY THE ALLIED CONSTRUCTION COUNCIL AGREEMENT. THE AVERAGE NUMBER OF EMPLOYEES COVERED RANGED FROM 3500 TO 4000, THE MAXIMUM OR PEAK COVERED AT ANY ONE TIME BEING 10,000. AT THE PRESENT TIME PROJECTS OF LIKE SIZE INVOLVING AN EXPENDITURE OF ONE AND A HALF BILLION DOLLARS ARE UNDER CONTEMPLATION BY THE H.E.P.C.

10. IN THE CASE OF THE UNITED ASSOCIATION, BOTH AS A MEMBER OF THE ALLIED CONSTRUCTION COUNCIL AND AFTER IT HAD WITHDRAWN, IT WAS THE PRACTICE OF THE GENERAL ORGANIZER (IN CANADA) OF THAT UNION, WHO WAS ALSO THE SIGNATORY TO THE AGREEMENT IN QUESTION ON BEHALF OF THE UNITED ASSOCIATION, TO DELEGATE LOCAL ADMINISTRATION DUTIES IN CONNECTION WITH THE AGREEMENT TO OFFICERS OR REPRESENTATIVES OF THE VARIOUS LOCALS OF THE ASSOCIATION. THUS FOR EXAMPLE IF A GRIEVANCE AROSE IN CONNECTION WITH THE PICKERING PROJECT, REPRESENTATIVES OF LOCAL 46, THE TORONTO AREA LOCAL, WOULD HANDLE THE MATTER DURING THE FIRST TWO STEPS OF THE GRIEVANCE PROCEDURE PROVIDED IN THE AGREEMENT. LOCAL MANAGEMENT OFFICIALS WOULD ALSO BE INVOLVED AT THIS STAGE. IF THE MATTER WAS NOT SETTLED, THEN THE GENERAL ORGANIZER AND SENIOR MANAGEMENT WOULD TAKE OVER. AGAIN, DURING RENEGOTIATION OF THE AGREEMENT OVER THE YEARS IT WAS THE PRACTICE OF THE GENERAL ORGANIZER TO HAVE REPRESENTATIVES OF THE VARIOUS LOCALS INVOLVED SIT IN ON THE NEGOTIATIONS. IT IS ALSO CUSTOMARY FOR REPRESENTATIVES OF LOCALS OF OTHER INTERNATIONAL UNIONS FORMING PART OF THE ALLIED COUNCIL TO SIT IN ON NEGOTIATIONS ALONG WITH REPRESENTATIVES OF THE INTERNATIONALS. IT IS CLEAR FROM THE EVIDENCE AND FROM THE CONTENTS OF THE VARIOUS AGREEMENTS FILED IN THIS CASE THAT THE MASTER AGREEMENT AND THE VARIOUS APPENDICES COVERING SPECIAL PROJECTS AND LINES AND CAMPS DO HAVE REGARD TO SOME TERMS AND CONDITIONS OF LOCAL UNION AGREEMENTS EITHER BY INCORPORATION OR BY SETTING RATES, ETC., WHICH IN FACT CORRESPOND TO THE RATES AND OTHER TERMS CONTAINED IN A LOCAL UNION AGREEMENT.

11. THE AGREEMENTS OF THE ALLIED CONSTRUCTION COUNCIL AND THE UNITED ASSOCIATION WERE DUE TO EXPIRE ON SEPTEMBER 30, 1966 AND BOTH THE COUNCIL AND THE ASSOCIATION GAVE TIMELY NOTICES TO THE H.E.P.C. OF THEIR INTENTION TO SEEK AMENDMENTS. THE UNITED ASSOCIATION ALSO INFORMED THE H.E.P.C. THAT IT WAS SEEKING RE-ENTRY TO THE ALLIED CONSTRUCTION COUNCIL. BARGAINING SESSIONS TOOK PLACE IN SEPTEMBER AT WHICH THE UNITED ASSOCIATION WAS REPRESENTED BY ITS GENERAL ORGANIZER AND ADDITIONALLY, ON AT LEAST ONE OCCASION, BY A REPRESENTATIVE OF LOCAL 46. AMONG THE PROPOSALS MADE BY BOTH THE ALLIED COUNCIL AND THE UNITED ASSOCIATION WAS ONE TO THE EFFECT THAT ALL WORK TO BE PERFORMED IN THE JURISDICTION OF A LOCAL UNION OF ONE OF THE PARENT UNIONS BELONGING TO THE COUNCIL WAS TO BE DONE UNDER THE TERMS AND CONDITIONS OF THE LOCAL UNION AGREEMENT. THE ALLIED CONSTRUCTION COUNCIL APPLIED FOR CONCILIATION BY LETTER DATED OCTOBER 7, 1966, THREE DAYS AFTER THE FILING OF THE PRESENT APPLICATION.

12. IT IS AGAINST THIS BACKGROUND, THEN, THAT LOCAL 46'S APPLICATION MUST BE VIEWED. IT WILL AT ONCE BE APPARENT THAT WHAT LOCAL 46 IS SEEKING

TO DO IS TO CARVE OUT A BARGAINING UNIT WITHIN AN APPROXIMATE TWENTY-FIVE MILE RADIUS OF TORONTO CITY HALL FROM A PROVINCE-WIDE BARGAINING UNIT WHICH, SINCE AT LEAST 1954, HAS FORMED THE BASIS OF COLLECTIVE BARGAINING FOR PLUMBERS AS REPRESENTED BY THE UNITED ASSOCIATION EITHER BARGAINING ON ITS OWN BEHALF OR THROUGH THE ALLIED CONSTRUCTION COUNCIL. IT WAS CONTENDED BY COUNSEL FOR LOCAL 46 THAT THE APPLICATION IS NOT A CRAFT APPLICATION MADE UNDER SECTION 6(2) OF THE LABOUR RELATIONS ACT, BUT, RATHER, UNDER SECTION 92(1) OF THE ACT WHICH PROVIDES:

WHERE A TRADE UNION APPLIES FOR CERTIFICATION AS BARGAINING AGENT OF THE EMPLOYEES OF AN EMPLOYER, THE BOARD SHALL DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING BY REFERENCE TO A GEOGRAPHIC AREA AND IT SHALL NOT CONFINE THE UNIT TO A PARTICULAR PROJECT.

IN OTHER WORDS, IF WE UNDERSTAND THE ARGUMENT CORRECTLY, LOCAL 46'S POSITION IS THAT IT IS NOT SEEKING TO CARVE OUT A UNIT BY REFERENCE TO TECHNICAL SKILLS OR ON A CRAFT BASIS BUT ONLY BY REFERENCE TO A GEOGRAPHIC AREA. ASSUMING THAT THIS IS NOT TO BE CONSIDERED A CRAFT APPLICATION, SECTION 92(1) IS NOT THE ONLY SECTION TO BE CONSIDERED. SECTION 6(1) IS THE GENERAL SECTION IN THE ACT DEALING WITH BARGAINING UNITS AND IT PROVIDES IN PART:

UPON AN APPLICATION FOR CERTIFICATION, THE BOARD SHALL DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING, BUT IN EVERY CASE THE UNIT SHALL CONSIST OF MORE THAN ONE EMPLOYEE.....

13. THE GENERAL DISCRETION VESTED IN THE BOARD BY THIS SUBSECTION IS LIMITED BY THE REFERENCE TO ONE EMPLOYEE, BY SUBSECTION 2 OF SECTION 6 (SUBJECT TO THE CONCLUDING WORDS OF THAT SUBSECTION TO WHICH WE SHALL RETURN), BY SECTION 9 (WHICH DEALS WITH SECURITY GUARDS AND IS NOT APPLICABLE TO THE FACTS OF THIS CASE) AND BY SECTION 92(1) WHICH CONTAINS A STATUTORY DIRECTIVE TO THE BOARD IN CONSTRUCTION INDUSTRY CASES ONLY. IN OUR VIEW SECTION 92 MERELY DEALS WITH ONE ASPECT OF A BARGAINING UNIT, THAT IS, THE GEOGRAPHIC AREA TO BE EMBRACED BY THE UNIT. THERE STILL REMAINS THE PROBLEM OF WHO IS TO BE COVERED BY THE UNIT. IF THIS IS NOT AN APPLICATION COMING WITHIN SECTION 6(2) THEN THE MATTER IS DETERMINED BY SECTION 6(1). VIEWED IN THIS LIGHT, THERE IS NO CONFLICT BETWEEN SECTION 6(1) AND SECTION 92(1) SO AS TO BRING SECTION 91 OF THE ACT INTO PLAY. TO STATE THE MATTER IN A SLIGHTLY DIFFERENT FASHION, THE COMPLETE DISCRETION VESTED IN THE BOARD BY SECTION 6(1) IS RESTRICTED BY SECTION 92(1) WHEN CONSIDERING THE AREA TO BE COVERED BY A BARGAINING UNIT TO THE EXTENT THAT THE BOARD SHALL DEFINE THE AREA TO BE COVERED NOT BY REFERENCE TO A PARTICULAR PROJECT BUT BY REFERENCE TO A GEOGRAPHIC AREA. TO THIS EXTENT SECTION 92(1) PREVAILS OVER SECTION 6(1) WITHIN THE MEANING OF SECTION 91 OF THE ACT. HOWEVER, THE GENERAL DISCRETION VESTED IN THE BOARD BY SECTION 6(1) AS TO WHAT CONSTITUTES AN APPROPRIATE BARGAINING UNIT, INCLUDING THE APPROPRIATE GEOGRAPHIC AREA, REMAINS UNAFFECTED BY SECTION 92.

14. IF THIS WERE TO BE CONSIDERED AN APPLICATION UNDER SECTION 6(2) (AND QUITE FRANKLY WE DO NOT SEE HOW IT IS OPEN TO LOCAL 46 TO CONTEND OTHERWISE) THEN THE CONCLUDING PORTION OF THAT SUBSECTION WHICH READS:

.....BUT THE BOARD SHALL NOT BE REQUIRED TO APPLY THIS SUBSECTION WHERE THE GROUP OF EMPLOYEES IS INCLUDED IN A BARGAINING UNIT REPRESENTED BY ANOTHER BARGAINING AGENT AT THE TIME THE APPLICATION IS MADE.

IS APPLICABLE TO THE FACTS OF THIS CASE ALTHOUGH WHETHER THE BOARD SHOULD EXERCISE ITS DISCRETION IS A MATTER WHICH WILL BE CONSIDERED BELOW.

15. THE NEXT CONTENTION OF THE APPLICANT IS THAT THE PLUMBERS AFFECTED BY THE APPLICATION HAVE NOT BEEN PROPERLY REPRESENTED BY THEIR PRESENT BARGAINING AGENT AND THEY SHOULD THEREFORE BE ENTITLED TO BE REPRESENTED BY A UNION OF THEIR OWN CHOICE. ON THIS POINT THE EVIDENCE WAS CERTAINLY NOT THE BEST EVIDENCE WHICH COULD HAVE BEEN PRODUCED, CONSISTING AS IT DID OF REPORTS BY BUSINESS REPRESENTATIVES OF LOCAL 46 OF WHAT MEMBERS OF THAT LOCAL PURPORTED TO FEEL ABOUT THEIR WORKING CONDITIONS WITH H. E. P. C. HOWEVER, IF THEIR EVIDENCE IS TO BE ACCEPTED, WHAT IT AMOUNTS TO IS THIS: MEMBERS OF LOCAL 46 WORK FOR H.E.P.C. AT TIMES AND AT OTHER TIMES WORK FOR OTHER EMPLOYERS IN THE TORONTO AREA. WHEN WORKING FOR EMPLOYERS OTHER THAN THE H.E.P.C. THEY WORK UNDER COLLECTIVE AGREEMENTS NEGOTIATED BY LOCAL 46. WHEN EMPLOYED BY H.E.P.C. THEY WORK UNDER THE UNITED ASSOCIATION AGREEMENT. THE PROVISIONS OF THE LOCAL 46 AGREEMENT AND THE UNITED ASSOCIATION AGREEMENT, THOUGH SIMILAR IN MANY RESPECTS, ARE NOT IDENTICAL. THERE IS NO COMPLAINT ABOUT WAGES AND OTHER SIMILAR TERMS. WHAT IS SAID TO BE THE REASON FOR THE MEN'S UNREST IS THE ABSENCE IN THE H.E.P.C. AGREEMENT OF TWO CLAUSES IN THE LOCAL 46 AGREEMENTS DEALING WITH FABRICATION OF PIPE ON THE JOB BY MEMBERS OF LOCAL 46 AND THE SUB-CONTRACTING OF WORK ONLY TO "UNION" CONTRACTORS. THERE IS NO EVIDENCE BEFORE THE BOARD TO SHOW WHETHER THESE "GRIEVORS" HAD COMPLAINED AT ANY TIME TO THEIR BARGAINING AGENT, THE UNITED ASSOCIATION, ABOUT THESE MATTERS OR WHETHER THEY HAD INSISTED THAT THEY BE PART OF THE PROPOSALS ADVANCED BY THE UNITED ASSOCIATION AT THE TIME, SAY, OF THE NEGOTIATION OF THE 1963 AGREEMENT. IT WAS SUGGESTED IN ARGUMENT THAT THE APATHY OF THE PARENT, THE UNITED ASSOCIATION, WAS THE REAL REASON FOR THIS APPLICATION BUT, APART FROM THE FACT THAT THE ASSOCIATION CHOSE NOT TO INTERVENE IN THESE PROCEEDINGS, THERE IS NO EVIDENCE BEFORE THE BOARD TO SUPPORT SUCH AN ALLEGATION. INDEED, IT WOULD SEEM THAT THE ASSOCIATION IN PROPOSING AT THE CURRENT NEGOTIATION SESSIONS THAT ALL WORK TO BE PERFORMED UNDER THE JURISDICTION OF A LOCAL SHALL BE DONE UNDER THE TERMS AND CONDITIONS OF THAT LOCAL'S AGREEMENT WAS IN FACT TAKING UP THE MATTERS COMPLAINED OF BY MEMBERS OF LOCAL 46.

16. IT WAS NOT SUGGESTED THAT THERE IS ANY GENERAL UNREST OR DISSATISFACTION AMONG PLUMBERS COVERED BY THE UNITED ASSOCIATION AGREEMENT OUTSIDE OF THE TORONTO AREA. WHILE IT IS TRUE THAT ANOTHER LOCAL OF THE UNITED ASSOCIATION DID BRING AN APPLICATION FOR

CERTIFICATION EARLIER IN THE YEAR, IT WAS DISMISSED AS BEING UNTIMELY. THE SAME LOCAL HAS NOT SINCE SEEN FIT TO BRING AN APPLICATION DURING THE "OPEN" SEASON.

17. THE APPLICANT, LOCAL 46, ALSO SUBMITTED THAT THE AREA PROPOSED IS A WELL-ESTABLISHED BOARD AREA IN CONSTRUCTION INDUSTRY CERTIFICATION CASES AND IS THE AREA THE BOARD WOULD GRANT TO LOCAL 46 IF IT APPLIED FOR CERTIFICATION FOR PLUMBERS EMPLOYED BY A GENERAL OR MECHANICAL CONTRACTOR. REFERENCE WAS MADE TO THE BALL BROTHERS LIMITED CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1962, P. 236, 63 C.L.L.C. P. 1133; NEWMAN BROTHERS CONSTRUCTION LTD. CASE, (1962) 63 C.L.L.C. P. 1134; THE ANDEEN CONSTRUCTION LIMITED CASE, (1962) 63 C.L.L.C. P. 1142. THE APPLICANT FURTHER CONTENDED THAT ON THE BASIS OF THE EVIDENCE BEFORE IT IN THIS CASE THE BOARD SHOULD NOT REGARD THE H.E.P.C. IN ANY DIFFERENT FASHION FROM ANY LARGE GENERAL OR MECHANICAL CONTRACTOR. WITH REGARD TO THIS ASPECT OF THE ARGUMENT WE OBSERVE AT THE OUTSET THAT THE CASES RELIED ON BY THE APPLICANT IN QUESTION OF THE APPROPRIATE AREA (AND OTHER SIMILAR CASES) DID NOT INVOLVE SITUATIONS COMPARABLE TO THE PRESENT ONE. MORE PARTICULARLY, NONE OF THE CASES INVOLVED AN ATTEMPT BY A UNION TO CARVE OUT A SMALL AREA FROM A PROVINCE-WIDE BARGAINING UNIT; NONE INVOLVED AN EMPLOYER INVOLVED IN SUCH EXTENSIVE CONSTRUCTION OPERATIONS AS THE H.E.P.C.; NON INVOLVED A BARGAINING RELATIONSHIP WITH A HISTORICAL BACKGROUND COMPARABLE TO THAT WHICH EXISTS IN THE PRESENT CASE.

18. FURTHERMORE, IN TWO DECISIONS IN 1953, THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1949-54, ¶17,059, C.L.S. 76-399, AND THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, OP. CIT., ¶17,066, C.L.S. 76-411, THIS BOARD REJECTED APPLICATIONS FOR SITUS OR PROJECT CERTIFICATIONS AT THE SIR ADAM BECK GENERATING STATION AT NIAGARA FALLS. WHILE THE BOARD DID NOT IN FACT FIND THAT THE APPROPRIATE BARGAINING UNIT IN EACH CASE WAS A PROVINCE-WIDE UNIT, IT HAD THIS TO SAY IN THE EARLIER DECISION AT P. 13,107:

.....MR. J. DIBBLEE, FOR THE RESPONDENT CONTENDED THAT THE UNIT COULD NOT BE CONFINED TO EMPLOYEES IN THE CRAFT ENGAGED ON THE SIR ADAM BECK GENERATING STATION BUT THAT THE ONLY APPROPRIATE UNIT WAS ONE WHICH INCLUDED ALL MEMBERS OF THE CRAFT THROUGHOUT THE CONSTRUCTION DIVISION OF THE RESPONDENT'S OPERATIONS. EXPERIENCE IN THE UNITED STATES, AS WELL AS IN OTHER PROVINCES OF CANADA, HAS SHOWN THAT, IN THE CASE OF AN UNDERTAKING SUCH AS THAT CONDUCTED BY THE RESPONDENT HERE, HAVING REGARD TO THE POLICIES RELATING TO RECRUITING OF PERSONNEL, THE SHIFTING OF EMPLOYEES FROM ONE PROJECT TO ANOTHER AND OTHER RELATED FACTORS, EFFECTIVE COLLECTIVE BARGAINING CAN BE CARRIED ON ONLY ON BEHALF OF A MUCH LARGER BARGAINING UNIT THAN THOSE ENGAGED ON ONE SINGLE CONSTRUCTION PROJECT, AS IS THE CASE IN THESE APPLICATIONS. IN FACT, IN MOST CASES, THE WHOLE UNDERTAKING IS REGARDED AS FORMING ONE COMPLEX FOR THIS PURPOSE.

THIS SAME PRINCIPLE WAS REPEATED IN THE SECOND DECISION. REFERENCE IS ALSO MADE TO THE HYDRO-ELECTRIC POWER COMMISSION, LINE CONSTRUCTION DIVISION, DORCHESTER CAMP CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1949-54, ¶17,041, C.L.S. 76-355, A 1952 DECISION OF THE BOARD, IN WHICH A PROVINCE-WIDE BARGAINING UNIT OF LINE CAMPS IN THE H.E.P.C.'S CONSTRUCTION DIVISION WAS FOUND TO BE THE APPROPRIATE UNIT AND NOT THE INDIVIDUAL LINE CAMPS. IN OUR VIEW THE CORRECTNESS OF THESE DECISIONS IS REFLECTED IN THE STABLE COLLECTIVE BARGAINING RELATIONSHIPS WHICH HAVE PREVAILED SINCE THAT TIME.

19. ARE WE THEN, IN THE CIRCUMSTANCES OF THIS CASE, TO DISRUPT THIS ESTABLISHED PATTERN OF COLLECTIVE BARGAINING ON A PROVINCE-WIDE BASIS? ARE WE TO ESTABLISH A PRECEDENT WHICH WOULD SURELY OPEN THE DOOR FOR ANY LOCAL UNION IN THE PROVINCE OF ANY OF THE 15 UNIONS PRESENTLY CONSTITUTING THE ALLIED CONSTRUCTION COUNCIL TO CARVE OUT LOCAL BARGAINING RIGHTS? IT IS TRUE THERE IS SOME EVIDENCE OF RECENT JURISDICTIONAL PROBLEMS AND PERHAPS OF SOME DISCONTENT AMONG PLUMBERS IN THE TORONTO AREA; IT IS ALSO LIKELY THAT THE TRANSFER OF EMPLOYEES FROM JOB TO JOB HAS NOT BEEN QUITE AS EXTENSIVE AS WAS PERHAPS ORIGINALLY PUT BEFORE THE BOARD IN EVIDENCE IN THE EARLIER CASES. HOWEVER, VIEWING THE EVIDENCE AS A WHOLE IN THE LIGHT OF THE PAST COLLECTIVE BARGAINING EXPERIENCE, WE ARE NOT PERSUADED IN ALL THE CIRCUMSTANCES BEFORE US THAT THE APPLICANT IS ENTITLED TO SUCCEED. MORE SPECIFICALLY, IF THIS APPLICATION IS REGARDED AS FALLING UNDER SECTION 6(1) OF THE ACT, THEN WE ARE NOT SATISFIED THAT THE PROPOSED BARGAINING UNIT IS AN APPROPRIATE ONE, HAVING REGARD TO THE RESTRICTED NATURE OF THE GEOGRAPHIC AREA CONTAINED IN SUCH UNIT. IF, ON THE OTHER HAND, THE APPLICATION IS DEEMED TO FALL UNDER SECTION 6(2) OF THE ACT - THAT IS, A CRAFT APPLICATION - THEN IN OUR VIEW THIS IS A PROPER CASE IN WHICH THE BOARD SHOULD EXERCISE ITS DISCRETION AND "REFUSE" TO APPLY THE SUBSECTION. IN COMING TO THIS CONCLUSION WE DESIRE TO MAKE IT CLEAR THAT THIS CASE IS ENTIRELY DIFFERENT FROM THE TYPE OF CASE WHICH THE BOARD HAD UNDER CONSIDERATION IN THE KENT TILE & MARBLE CO. LIMITED CASE, (1961) C.L.L.C. P. 940, C.L.S. 76-756. IT FOLLOWS, THEREFORE, THAT THE APPLICATION MUST BE DISMISSED.

20. IN THE RESULT, IT IS NOT NECESSARY FOR THE BOARD TO DEAL WITH THE ARGUMENT THAT LOCAL 46, BEING A CHILD OF ITS PARENT, THE UNITED ASSOCIATION, AND HAVING THE SAME CONSTITUTION, HAS NO SEPARATE IDENTITY THEREFROM AND IS THUS NOT ABLE TO REPLACE IT IN A CERTIFICATION APPLICATION. WHILE WE HAVE NOT BEEN ABLE TO DISCOVER ANY PREVIOUS CASE DEALING PRECISELY WITH THIS POINT, IT IS CLEAR THAT FOR OTHER PURPOSES UNDER THE LABOUR RELATIONS ACT A LOCAL UNION IS REGARDED AS BEING AN ENTITY SEPARATE AND DISTINCT FROM ITS PARENT. SEE, FOR EXAMPLE, THE AMERICAN STANDARD PRODUCTS (CANADA) LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1965, P. 590; THE MILSON FLOORS LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, BOARD FILE NO. 12166-66-R; AND THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF HAMILTON CASE, (1962) C.L.L.C. 1119.

21. AGAIN, WE ARE NOT CALLED UPON TO CONSIDER THE SUFFICIENCY OF THE EVIDENCE OF MEMBERSHIP FILED IN THIS CASE BY LOCAL 46. WE OBSERVE,

HOWEVER, THAT THE EVIDENCE CONSISTED OF STATEMENTS OF MEMBERSHIP VERIFIED BY A RESPONSIBLE OFFICER OF THE LOCAL UNION. TESTIMONY AT THE HEARING DISCLOSED THAT SOME OF THE PERSONS FOR WHOM STATEMENTS OF MEMBERSHIP HAD BEEN FILED WERE IN FACT MEMBERS OF A LOCAL OTHER THAN LOCAL 46 WHO HAD DEPOSITED TRANSFER CARDS OR WORK CARDS WITH LOCAL 46. REGARDLESS OF THE EFFECT OF THE DEPOSIT OF SUCH CARDS UNDER THE UNION CONSTITUTION AND WITHOUT MAKING ANY FINAL PRONOUNCEMENT ON THE FAILURE OF THE APPLICANT TRADE UNION TO DISCLOSE THIS INFORMATION WHEN FILING ITS MEMBERSHIP EVIDENCE, IT IS OUR VIEW THAT THE WISER COURSE FOR ANY UNION TO FOLLOW IS TO MAKE FULL DISCLOSURE TO THE BOARD OF ALL FACTS PERTAINING TO ITS EVIDENCE OF MEMBERSHIP.

22. FINALLY, IT WAS NOTED ABOVE THAT THE UNITED ASSOCIATION, ALTHOUGH DULY SERVED, FAILED TO FILE AN INTERVENTION IN THIS CASE OR TO APPEAR AT THE HEARING. THE SAME IS TRUE OF THE ALLIED CONSTRUCTION COUNCIL. WE ARE UNABLE TO UNDERSTAND THE ATTITUDE OF EITHER ENTITY. WHILE IT IS TRUE THAT THE ALLIED CONSTRUCTION COUNCIL DOES NOT HAVE BARGAINING RIGHTS FOR THE PLUMBERS AT THIS TIME, ITS INTERESTS IN THE LONG RUN ARE OBVIOUSLY GOING TO BE AFFECTED BY THE BOARD'S DECISION. MOREOVER, IT IS APPARENTLY NOW SEEKING TO BARGAIN ON BEHALF OF THE PLUMBERS WITH THE RE-ENTRY OF THE UNITED ASSOCIATION INTO THE COUNCIL. BOTH THE ASSOCIATION AND THE COUNCIL THUS HAVE A VERY DIRECT INTEREST IN THE OUTCOME OF THESE PROCEEDINGS YET THEY CHOSE TO ALLOW AN EMPLOYER TO FIGHT THEIR BATTLE. WE DO NOT CARE TO SPECULATE ON THE REASON FOR THEIR ACTIONS BUT, WHATEVER THEIR MOTIVES, IT DOES LITTLE TO ENHANCE THE INTERESTS OF THEIR OWN MOVEMENT OR THE CAUSE OF GOOD INDUSTRIAL RELATIONS IN THIS PROVINCE.

23. THE APPLICATION IS DISMISSED.

12296-66-R: INTERNATIONAL LABORERS' UNION OF NORTH AMERICA - LOCAL 527 (C.L.C.) (A.F.L.-C.I.O.) (APPLICANT) v. L. ZUCCARINI GENERAL CONTRACTORS LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

DECISION OF THE BOARD: (NOVEMBER 22, 1966).

1. THE APPLICANT FILED TWO CERTIFICATES OF MEMBERSHIP. THE CERTIFICATES ARE SIGNED BY THE MEMBERS AND INDICATE THAT MONTHLY DUES OF \$3.50 HAVE BEEN PAID FOR AT LEAST ONE MONTH WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE CERTIFICATES ARE CHECKED AND CERTIFIED CORRECT BY AN OFFICER OF THE APPLICANT. THE APPLICANT ALSO FILED TWO COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THE COMBINATION APPLICATIONS FOR MEMBERSHIP ARE SIGNED BY THE EMPLOYEES AND THE RECEIPTS ARE COUNTERSIGNED AND INDICATE THAT A PAYMENT OF AT LEAST \$1.00 HAS BEEN MADE WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE MONEY WAS COLLECTED BY ONE PERSON. THE APPLICANT ALSO FILED A DULY

COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

2. THE RESPONDENT FILED A REPLY AND A LIST OF EMPLOYEES CONTAINING ONE NAME, BUT FAILED TO FILE SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT.

4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

5. THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE RESPONDENT ALLEGES THERE IS ONLY ONE, OR IF HIS BROTHER, A WORKING FOREMAN, IS INCLUDED, AT BEST TWO PERSONS IN THE BARGAINING UNIT. THE RESPONDENT'S RECORDS SUPPORT ITS SUBMISSION. THE APPLICANT SUBMITS THERE ARE SIX PERSONS IN THE UNIT. THE VIVA VOCE TESTIMONY OF THE ADDITIONAL FOUR PERSONS CLAIMED BY THE APPLICANT TO FALL INTO THE UNIT CLEARLY ESTABLISHES THAT THE RESPONDENT'S FOREMAN HIRED THEM, DIRECTED THEM IN THEIR WORK AND LAID THEM OFF. WHILE IT IS POSSIBLE THEY WERE PAID BY CHEQUES SIGNED BY A COMPANY OTHER THAN THE RESPONDENT, THIS IS NOT NECESSARILY A GOVERNING FACTOR. SEE NATIONAL UNION OF PUBLIC EMPLOYEES V. MUNICIPALITY OF METROPOLITAN TORONTO, 61 C.L.L.C. ¶16,214; GOLDLIST CONSTRUCTION LIMITED, OCTOBER, 1966, BOARD FILE NO. 12089-66-R. IN OUR VIEW THE UNCONTRADICTED EVIDENCE OF THE FOUR EMPLOYEES MAKES IT CLEAR THAT THE RESPONDENT EXERCISED DIRECT CONTROL OVER THEIR EMPLOYMENT STATUS AND IN THE CONDUCT OF THEIR WORK. IN THE RESULT, THEREFORE, WE FIND THAT THEY WERE EMPLOYEES OF THE RESPONDENT ON THE DATE OF THE MAKING OF THE APPLICATION.

7. WORKING FOREMEN ARE NORMALLY INCLUDED IN A CONSTRUCTION INDUSTRY BARGAINING UNIT. HOWEVER THERE IS NO EVIDENCE BEFORE THE BOARD AS TO WHETHER G. ZUCCARINI IS A LABOUR FOREMAN OR SOME OTHER KIND OF FOREMAN AND, CONSEQUENTLY, WE ARE UNABLE TO DETERMINE WHETHER HE SHOULD BE INCLUDED IN THE UNIT. WHETHER HE IS IN OR OUT OF THE UNIT THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12337-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. MOTOR WHEEL CORPORATION OF CANADA LTD. (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

- AND -

12343-66-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. MOTOR WHEEL CORPORATION OF CANADA LTD. (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: ROBERT WHITE AND KENNETH SIMPSON FOR INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), JAMES N. BARTLET, Q.C., AND PAUL W. FAIR FOR MOTOR WHEEL CORPORATION OF CANADA LTD., AND C. J. SCOTT FOR CANADIAN UNION OF OPERATING ENGINEERS.

DECISION OF THE BOARD: (NOVEMBER 30, 1966).

1. THE NAME "MOTOR WHEEL CORP. OF CANADA LTD." AND "MOTOR WHEEL CORPORATION OF CANADA LIMITED" APPEARING IN THE STYLE OF CAUSE OF THESE APPLICATIONS AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "MOTOR WHEEL CORPORATION OF CANADA LTD."
2. THE BOARD DIRECTS THAT THE ABOVE APPLICATIONS BE AND THEY ARE HEREBY CONSOLIDATED.
3. THE FINDINGS HEREINAFTER SET OUT WERE MADE BY THE BOARD AFTER GIVING CAREFUL CONSIDERATION TO THE SUBMISSIONS OF COUNSEL FOR THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) AND THOSE OF COUNSEL FOR CANADIAN UNION OF OPERATING ENGINEERS, WITH RESPECT TO THE TIMING AND FORM OF THE INTERVENTION AND APPLICATION FOR CERTIFICATION OF THE LATTER UNION.
4. THE BOARD FINDS THAT INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
5. THE BOARD FINDS THAT CANADIAN UNION OF OPERATING ENGINEERS IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
6. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS COVERED BY A CERTIFICATE OF EVEN DATE HEREWITH WITH RESPECT TO THE CANADIAN UNION OF OPERATING ENGINEERS AND THE RESPONDENT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING (HEREINAFTER REFERRED TO AS BARGAINING UNIT No. 1).
7. FOR THE PURPOSE OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE

PARTIES THAT NICK DELEY AND ANTHONY B. FARRON, QUALITY CONTROL TECHNICIANS, ARE PART OF THE OFFICE STAFF AND ARE NOT INCLUDED IN BARGAINING UNIT No. 1.

8. THE BOARD FURTHER FINDS THAT ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS POWER HOUSE AT CHATHAM, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING (HEREINAFTER REFERRED TO AS BARGAINING UNIT No. 2).

9. THE DOCUMENTARY EVIDENCE OF MEMBERSHIP FILED INDICATES THAT THE CANADIAN UNION OF OPERATING ENGINEERS HAS NO MEMBERSHIP IN BARGAINING UNIT No. 1, AND THAT INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) HAS NO MEMBERSHIP IN BARGAINING UNIT No. 2.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT No. 1, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

11. A CERTIFICATE WILL ISSUE TO INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), WITH RESPECT TO BARGAINING UNIT No. 1.

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT No. 2, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF CANADIAN UNION OF OPERATING ENGINEERS AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

13. A CERTIFICATE WILL ISSUE TO CANADIAN UNION OF OPERATING ENGINEERS, WITH RESPECT TO BARGAINING UNIT No. 2.

12338-66-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. ANDERSON CARTAGE LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J. E. C. ROBINSON.

DECISION OF THE BOARD: (NOVEMBER 2, 1966).

1. THIS IS AN APPLICATION FOR CERTIFICATION. THE BOARD'S RECORDS DISCLOSE THAT BY ITS CERTIFICATE, DATED DECEMBER 20TH, 1961, THE BOARD

CERTIFIED THE APPLICANT AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF STONEY CREEK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF. SEE BOARD FILE NO. 2450-61-R. THIS UNIT WOULD INCLUDE THE BARGAINING UNIT FOR WHICH THE APPLICANT NOW SEEKS CERTIFICATION. THE APPLICANT ALREADY HOLDING BARGAINING RIGHTS WITH RESPECT TO THIS BARGAINING UNIT, THE PRESENT APPLICATION IS ACCORDINGLY DISMISSED.

12380-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1988 (APPLICANT) v. M. J. LAFORTUNE CONST. LTD. (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

DECISION OF THE BOARD: (NOVEMBER 8, 1966).

1. THE NAME "M. J. LAFORTUNE CONST. LTD., 1512 ORCHARD AVE; OTTAWA, ONT." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "M. J. LAFORTUNE CONST. LTD."
2. THE APPLICANT FILED TWO COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THE COMBINATION APPLICATIONS FOR MEMBERSHIP ARE SIGNED BY THE EMPLOYEES AND THE RECEIPTS ARE COUNTERSIGNED AND INDICATE THAT A PAYMENT OF AT LEAST \$1.00 HAS BEEN MADE WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE MONEY WAS COLLECTED BY ONE PERSON. THE APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.
3. THE RESPONDENT FILED A REPLY, A LIST OF EMPLOYEES CONTAINING THREE NAMES AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
4. THE RESPONDENT COMPANY HAS REQUESTED A HEARING ON THE GROUND THAT, "WHILE ON THE DATE ON WHICH THE APPLICATION WAS MADE THERE WERE THREE CARPENTERS ON THE JOB, THERE IS NOT NOW AND WILL NOT IN THE FUTURE BE MORE THAN ONE CARPENTER ON THE JOB AND THE RESPONDENT RESPECTFULLY SUBMITS THAT IN THESE CIRCUMSTANCES IT IS WHOLLY INAPPROPRIATE THAT ANY BARGAINING UNIT BE ESTABLISHED IN RESPECT OF THIS JOB AND, SINCE THE RESPONDENT HAS NO OTHER JOBS IN THE AREA DESCRIBED IN THE APPLICATION, THAT THE APPLICATION SHOULD BE DISMISSED. SEE DECISION OF THE BOARD, TEAMSTERS LOCAL 230 v. JOHNSON - KIEWIT SUBWAY CORPORATION."

THE JOHNSON-KIEWIT SUBWAY CORPORATION CASE, O.L.R.B. MONTHLY REPORT, JUNE, 1966, P. 182, IS OF COURSE DISTINGUISHABLE FROM THE PRESENT CASE IN THAT THERE WAS ONLY ONE EMPLOYEE IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION AND IN SUCH CIRCUMSTANCES SECTION 6(1) OF THE LABOUR RELATIONS ACT COMES INTO PLAY. THAT SECTION PROVIDES THAT "THE BOARD SHALL DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING, BUT IN EVERY CASE THE UNIT SHALL CONSIST OF MORE THAN ONE EMPLOYEE". HOWEVER, THIS SECTION MUST BE READ SUBJECT TO

SECTION 7(1) WHICH PROVIDES THAT "THE BOARD SHALL ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE". IN OTHER WORDS, THE MATERIAL TIME IS THE DATE OF THE MAKING OF THE APPLICATION. IN THIS CASE ON THAT DATE THERE WERE THREE EMPLOYEES IN THE BARGAINING UNIT. THE BOARD HAS REPEATEDLY HELD THAT EVEN THOUGH THE JOB MAY BE SHUT DOWN SHORTLY AFTER THE DATE OF THE MAKING OF THE APPLICATION OR, PERHAPS, AFTER THE BOARD HAS ISSUED A CERTIFICATE, THIS FACT WILL NOT DETER THE BOARD FROM ISSUING A CERTIFICATE. SEE FOR EXAMPLE, MOLLENHAUER CONTRACTING COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, JULY, 1966, P. 249. IN THESE CIRCUMSTANCES, THEREFORE, THE BOARD IS OF THE OPINION THAT THERE IS NO NEED TO HOLD A HEARING IN THIS CASE. SEE SECTION 75(9A) OF THE ACT.

5. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

6. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

7. THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LANARK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12382-66-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 1819 (APPLICANT) v. CANADIAN STRUCTURAL GLASS LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: (NOVEMBER 8, 1966).

1. THE APPLICANT FILED ONE STATEMENT OF DESIRE SIGNED BY FIFTEEN PERSONS ATTESTING TO THE FACT THAT THEY WERE PAID-UP MEMBERS IN GOOD STANDING OF LOCAL 1819. THE BUSINESS REPRESENTATIVE OF THE APPLICANT CERTIFIES AS TO THE DATES ON WHICH THE FIFTEEN PERSONS AFFIXED THEIR SIGNATURES TO THE STATEMENT OF DESIRE. THE APPLICANT ALSO FILED FIFTEEN DUPLICATE RECEIPTS INDICATING THAT MONTHLY DUES OF \$6.00 OR IN ONE CASE AN INITIATION FEE OF \$10.00 HAVE BEEN PAID FOR AT LEAST ONE

MONTH WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE RECEIPTS ARE COUNTERSIGNED AND INDICATE THAT THERE WAS MORE THAN ONE COLLECTOR OF THE MONEY. THE APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

2. THE RESPONDENT FILED A LIST OF EMPLOYEES CONTAINING NINETEEN NAMES BUT FAILED TO FILE A REPLY OR SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT.

4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

5. THE BOARD FURTHER FINDS THAT ALL GLAZIERS AND GLAZIERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

THE BOARD NOTES THAT THIS IS AN APPLICATION FALLING UNDER SECTION 92 OF THE LABOUR RELATIONS ACT. FOR PURPOSES OF CLARITY THE BOARD POINTS OUT THAT PERSONS INCLUDED IN THE ABOVE BARGAINING UNIT ARE GOVERNED BY THE DEFINITION OF "EMPLOYER" IN SECTION 90(A) AND THE DEFINITION OF "CONSTRUCTION INDUSTRY" IN SECTION 1(1)(DA) OF THE LABOUR RELATIONS ACT.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT IN THIS CASE IS SOMEWHAT UNUSUAL IN THAT THE STATEMENTS BY THE MEMBERS AS TO THEIR MEMBERSHIP IN THE APPLICANT ARE CONTAINED IN ONE DOCUMENT RATHER THAN IN A SERIES OF SEPARATE DOCUMENTS. FURTHER, THERE IS NO CERTIFICATION BY A RESPONSIBLE OFFICER OF THE APPLICANT THAT THE EMPLOYEES IN QUESTION ARE PAID-UP MEMBERS IN GOOD STANDING. ON THE OTHER HAND, THE RECEIPTS FILED CLEARLY INDICATE THAT THE MONEY IN ALL CASES EXCEPT ONE WAS FOR MONTHLY DUES AND THESE RECEIPTS ARE COUNTERSIGNED. WE HAVE TAKEN TIME TO CONSIDER THIS MEMBERSHIP EVIDENCE AND HAVE DECIDED TO ACCEPT IT IN THIS

PARTICULAR CASE. HOWEVER, THIS TYPE OF MEMBERSHIP EVIDENCE MAY LEAD TO CERTAIN DIFFICULTIES IN DIFFERENT CIRCUMSTANCES AND WE THEREFORE WISH TO MAKE IT CLEAR THAT THIS TYPE OF EVIDENCE MAY NOT NECESSARILY BE ACCEPTED WITHOUT QUALIFICATION IN FUTURE CASES.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12388-66-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION (APPLICANT)
V. MERCURY TOOL & STAMPING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES
(OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS, D. B. ARCHER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: EDWARD C. WITTHAMES AND JOHN J. McDONALD FOR THE APPLICANT, FRANK E. ARMSTRONG AND P. R. STEVENS FOR THE RESPONDENT, AND THOMAS DONNELLY, BORIS J. SYKO AND MARIE GARNIER FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (NOVEMBER 25, 1966).

1. THIS IS AN APPLICATION FOR CERTIFICATION.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE APPLICANT FILED DOCUMENTARY EVIDENCE OF MEMBERSHIP FOR 76 PERSONS SAID TO BE IN THE BARGAINING UNIT, WHICH, AT THE DATE THE APPLICATION WAS MADE, CONSISTED OF 121 EMPLOYEES, ACCORDING TO THE LIST OF EMPLOYEES SUBMITTED BY THE RESPONDENT. SIXTY-FIVE OF THE CARDS BORE NAMES CORRESPONDING TO NAMES ON THE RESPONDENT'S LISTS. THE DATES ON THREE OF THESE CARDS, INSERTED IN HANDWRITING, APPEARED TO BE 1960. SETTING ASIDE THESE CARDS, THE RESPONDENT'S MEMBERSHIP EVIDENCE, ACCEPTABLE TO THE BOARD, COVERS NOT MORE THAN FIFTY-FIVE PER CENT BUT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT. THE APPLICANT HAS THEREFORE DEMONSTRATED SUFFICIENT MEMBERSHIP TO ENTITLE IT TO A REPRESENTATION VOTE, BUT NOT TO OUTRIGHT CERTIFICATION.

5. THERE WAS FILED IN OPPOSITION TO THE APPLICATION A NOTICE OF DESIRE, OR PETITION, BEARING THE SIGNATURES OF 47 PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT. THIS DOCUMENT INDICATED AN "OVERLAP" OF 30 NAMES. THAT IS TO SAY, 30 OF THE PETITIONERS HAD ALSO SIGNED MEMBERSHIP CARDS IN THE UNION.

6. THE BOARD ANNOUNCED THE COUNT AT THE HEARING AND INDICATED TO THE PARTIES THAT, SINCE THE APPLICANT WAS ONLY IN A VOTE POSITION INsofar AS EVIDENCE OF MEMBERSHIP WAS CONCERNED, NOTHING WOULD BE SERVED BY GOING INTO THE MATTER OF THE ORIGATION AND CIRCULATION OF THE PETITION AND THE MANNER IN WHICH THE SIGNATURES THERETO WERE OBTAINED, SINCE, EVEN IF IT WERE FOUND TO BE AN ACCEPTABLE PETITION EXPRESSING THE VOLUNTARY DESIRE OF ITS SIGNATORIES AND WOULD LEAVE UNCONTESTED EVIDENCE OF MEMBERSHIP FOR NOT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT, THE OUTCOME OF SUCH A FINDING, IN ACCORDANCE WITH LONG ESTABLISHED BOARD PRACTICE AND POLICY, WOULD BE THE ORDERING OF A REPRESENTATION VOTE. AS THE RESULT OF QUESTIONING BY THE BOARD, THE REPRESENTATIVES OF THE PETITIONERS EXPRESSED THE VIEW THAT A REPRESENTATION VOTE WAS PRECISELY WHAT THEY SOUGHT AND EXPECTED TO GET IF THE PETITION WERE TO BE ESTABLISHED THROUGH EVIDENCE. COUNSEL FOR THE RESPONDENT SUBMITTED THAT THE PETITION SHOULD BE INQUIRED INTO AND IF AUTHENTICATED SHOULD BE TREATED AS CANCELLING THE MEMBERSHIP EVIDENCE SUBMITTED BY THE UNION ON BEHALF OF THE "OVERLAPPING" EMPLOYEES.

7. AS INDICATED EARLIER, IT HAS LONG BEEN THE POLICY AND PRACTICE OF THE BOARD TO RESOLVE THE QUESTIONS RAISED BY A PETITION CONTAINING AN EFFECTIVE OVERLAP BY ORDERING A VOTE. IN SUCH SITUATIONS THE BOARD FINDS ITSELF PRESENTED WITH EVIDENCE OF MEMBERSHIP USUALLY CONSISTING OF, AS IT DOES IN THE PRESENT CASE, AN APPLICATION FOR MEMBERSHIP SIGNED BY AN EMPLOYEE REQUESTING AND ACCEPTING MEMBERSHIP IN THE TRADE UNION APPLICANT AND AUTHORIZING IT TO ACT AS BARGAINING AGENT ON HIS BEHALF. SUCH APPLICATIONS FOR MEMBERSHIP ARE ACCOMPANIED BY, OR INCORPORATE, A RECEIPT INDICATING THE PAYMENT OF NOT LESS THAN ONE DOLLAR, IN ACCORDANCE WITH THE BOARD'S REQUIREMENTS. THE RECEIPTS FOR THE \$1.00 PAYMENT ARE, AS IN THIS INSTANCE, COUNTERSIGNED BY THE EMPLOYEES CONCERNED. AGAINST THIS EVIDENCE OF DESIRE FOR MEMBERSHIP AND REPRESENTATION THERE IS FILED THE PETITION, WHICH, TO BE EFFECTIVE, MUST, AMONG OTHER THINGS, SHOW THAT IT HAS BEEN SIGNED BY EMPLOYEES WHO HAVE ALSO SIGNED MEMBERSHIP CARDS AND PAID THE MONEY PAYMENT.

8. CONFRONTED THUS WITH THESE TWO OPPOSING STATEMENTS OF INTENT ON THE PART OF THE PETITIONING EMPLOYEES AND TAKING INTO ACCOUNT THE NATURE OF THE DOCUMENTS AND THE VALIDATING REQUIREMENTS ATTACHING THERETO IN ORDER TO ENSURE ACCEPTANCE BY THE BOARD IN THE FIRST INSTANCE, THE BOARD HAS CONSISTENTLY CONCLUDED THAT THE EVIDENT DILEMMA OF THE EMPLOYEES AND THE DOUBT AROUSED AS TO WHAT THEIR REAL POSITION IS, ARE BEST AND MOST REASONABLY RESOLVED THROUGH THE MEDIUM OF A REPRESENTATION VOTE.

9. COUNSEL FOR THE RESPONDENT ALSO DREW THE BOARD'S ATTENTION TO THE PROVISIONS OF SECTION 7(5) OF THE LABOUR RELATIONS ACT, WHICH READS AS FOLLOWS:-

IF THE BOARD IS SATISFIED THAT MORE THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION AND THAT THE TRUE WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE, THE

BOARD MAY CERTIFY THE TRADE UNION AS BARGAINING AGENT WITHOUT TAKING A REPRESENTATION VOTE.

IN VIEW OF THE FACT THAT NO EVIDENCE OR REPRESENTATIONS, OTHER THAN THOSE REFERRED TO ABOVE, WERE OFFERED BY ANY OF THE PARTIES WITH A VIEW TO SATISFYING THE BOARD THAT A REPRESENTATION VOTE WOULD NOT REVEAL THE TRUE WISHES OF THE EMPLOYEES, THE BOARD FINDS THAT IT IS NOT SATISFIED THAT THE REPRESENTATION VOTE WOULD NOT REVEAL THE TRUE WISHES OF THE EMPLOYEES AND IN THE EXERCISE OF ITS DISCRETION DECLINES TO CERTIFY THE APPLICANT WITHOUT A VOTE.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

11. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

12. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

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12402-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 837 (APPLICANT) v. SCHWENGER CONSTRUCTION LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: H. MANCINELLI FOR THE APPLICANT AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: (NOVEMBER 21, 1966).

1. THE NAME "SCHWENGER CONSTRUCTION LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "SCHWENGER CONSTRUCTION LIMITED".

2. THE APPLICANT TRADE UNION HAS APPLIED TO THE BOARD TO BE CERTIFIED AS THE BARGAINING AGENT FOR ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH, THE TOWN OF BURLINGTON AND THE TOWNSHIP OF NASSAGAWEYA IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN. AT THE HEARING THE APPLICANT REQUESTED LEAVE TO AMEND THE DESCRIPTION OF THE BARGAINING UNIT BY ADDING AS AN EXCEPTION "AND THOSE PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT".

3. THE COLLECTIVE AGREEMENT REFERRED TO IS ONE BETWEEN THE GENERAL CONTRACTORS' SECTION OF THE HAMILTON CONSTRUCTION ASSOCIATION AND BUILDERS' EXCHANGE AND THE APPLICANT, EFFECTIVE MAY 1, 1965 AND TO REMAIN IN EFFECT UNTIL APRIL 30, 1968. THE RESPONDENT COMPANY IS BOUND BY THE TERMS OF THIS COLLECTIVE AGREEMENT WHICH, BY ARTICLE 3, APPLIES TO THE CITY OF HAMILTON AND WITHIN A RADIUS OF 15 MILES FROM THE HAMILTON CITY LIMITS. THE JOB AFFECTED BY THE PRESENT APPLICATION, CONSTRUCTION OF AN INTERCEPTOR SEWER, IS IN THE CITY OF HAMILTON.

4. THE RECOGNITION CLAUSE IN THE COLLECTIVE AGREEMENT PROVIDES THAT THE EMPLOYER RECOGNIZES THE UNION AS THE EXCLUSIVE BARGAINING AGENT FOR "ALL BUILDING TRADES HELPERS AND COMMON BUILDING LABOURERS". A PRELIMINARY QUESTION THUS ARISES AS TO WHETHER THE LABOURERS WORKING ON THE INTERCEPTOR SEWER ARE COVERED BY THE SAID COLLECTIVE AGREEMENT. MORE SPECIFICALLY, THE QUESTION IS ARE LABOURERS WHO WORK UNDERGROUND ON SEWERS AND TUNNELS INCLUDED IN THE TERMS "BUILDING TRADES HELPERS AND COMMON BUILDING LABOURERS"?

5. IN THE TORONTO AREA THE BOARD HAS RECOGNIZED THE FACT THAT TWO SEPARATE LOCALS OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCALS 506 AND 183, BARGAIN FOR DIFFERENT TYPES OF LABOURERS. LOCAL 506 BARGAINING UNITS ARE DESCRIBED IN TERMS OF CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS AND LOCAL 183 UNITS ARE DESCRIBED IN TERMS OF ALL CONSTRUCTION LABOURERS SAVE AND EXCEPT THOSE ENGAGED ON BUILDING PROJECTS. THUS, LOCAL 183 HAS BEEN CERTIFIED FOR AND BARGAINS ON BEHALF OF, INTER ALIA, LABOURERS ENGAGED IN SEWER AND WATERMAIN WORK INCLUDING MINERS. MOREOVER, LOCAL 183 HAS COLLECTIVE AGREEMENTS WITH A SEWER AND WATERMAIN EMPLOYERS' ASSOCIATION AND WITH INDIVIDUAL CONTRACTORS ENGAGED IN THAT BUSINESS.

6. THIS TWO-FOLD CLASSIFICATION OF LABOURERS HAS NOT BEEN EXTENDED BY THE BOARD EXCEPT IN SO FAR AS LOCALS 506 OR 183 HAVE EXTENDED THEIR ACTIVITIES OUTSIDE OF THE TORONTO AREA, AS FOR EXAMPLE IN THE COUNTY OF SIMCOE. IN OTHER WORDS, THE REGULAR LABOURERS' BARGAINING UNIT OUTSIDE OF THE TORONTO AREA OF "ALL CONSTRUCTION LABOURERS" IS INTENDED TO INCLUDE ALL CLASSIFICATIONS OF LABOURERS. THIS APPLIES TO CERTIFICATIONS IN THE HAMILTON AREA. IF THAT TERMINOLOGY HAD BEEN USED IN THE COLLECTIVE AGREEMENT IN QUESTION THERE WOULD BE NO DIFFICULTY IN THIS CASE.

7. THE APPLICANT HAS INFORMED THE BOARD THAT THERE IS NO SEPARATE BARGAINING IN THE HAMILTON AREA WITH SEWER AND WATERMAIN CONTRACTORS. SOME CONTRACTORS WHO ENGAGE IN THIS FORM OF CONSTRUCTION APPARENTLY BELONG TO THE HAMILTON CONSTRUCTION ASSOCIATION AND, TO USE THE APPLICANT'S WORDS, "LIVE UP TO THE EXCHANGE COLLECTIVE AGREEMENT" DESCRIBED ABOVE. DOUBTS HAVE APPARENTLY ARISEN IN THE MINDS OF THE PARTIES BECAUSE OF QUESTIONS RAISED BY CONTRACTORS COMING INTO THE AREA FROM TORONTO WHERE THE DIVISION EXISTS. THERE IS OF COURSE ONLY ONE LABOURERS' LOCAL IN HAMILTON. A SEPARATE COLLECTIVE AGREEMENT COVERING SEWER AND WATERMAIN JOBS WOULD APPARENTLY HAVE SOME ADVANTAGES FOR BOTH THE UNION AND THE EMPLOYERS.

THE RESPONDENT HAS INFORMED THE BOARD THAT IT HAS ASSUMED THAT THE COLLECTIVE AGREEMENT BY WHICH IT IS BOUND COVERS SEWER JOBS AND, WE WOULD ASSUME, LABOURERS CLASSIFIED AS MINERS. AT THE HEARING THE APPLICANT WAS OF THE OPINION THAT THE AGREEMENT COVERED THE JOB AFFECTED BY THIS APPLICATION. THE BOARD NOTES THAT THE WAGE CLAUSE IN THE AGREEMENT SPECIFIES A MINIMUM RATE ONLY. THE BOARD ALSO NOTES THAT UNDER SECTION 39(5) OF THE LABOUR RELATIONS ACT IT IS ALWAYS OPEN TO THE PARTIES TO REVISE ANY TERM OF A COLLECTIVE AGREEMENT BY MUTUAL CONSENT OTHER THAN A PROVISION RELATING TO ITS TERM OF OPERATION.

9. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS WE HAVE CONCLUDED ON THE EVIDENCE BEFORE US THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE HAMILTON CONSTRUCTION ASSOCIATION AND BUILDERS' EXCHANGE.

10. THE BOARD NOTES THAT UNDER THE PROVISIONS OF SECTION 79(1) OF THE ACT IT IS ALWAYS OPEN TO PARTIES TO PROCEEDINGS, IF THEY BELIEVE THE BOARD HAS ERRED IN ANY WAY, TO REQUEST A RECONSIDERATION OF A DECISION.

11. THESE PROCEEDINGS ARE HEREBY TERMINATED.

INDEXED ENDORSEMENTS - TERMINATION

12346-66-R: PATRICK J. HARTE (APPLICANT) v. UNITED STEEL WORKERS OF AMERICA (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: PATRICK J. HARTE FOR THE APPLICANT, AND LORNE INGLE, PAT DALEY AND KEN LEVACK FOR THE RESPONDENT.

DECISION OF THE BOARD: (NOVEMBER 3, 1966).

1. THIS IS AN APPLICATION FOR A DECLARATION, PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT, TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT TRADE UNION.

2. AT THE HEARING IN THIS MATTER, THE WITNESS WHO APPEARED IN SUPPORT OF THE APPLICATION WAS NOT ABLE TO IDENTIFY A SUFFICIENT NUMBER OF THE SIGNATURES TO THE PETITION, WHICH HAD BEEN CIRCULATED AMONG EMPLOYEES OF THE EMPLOYER, LEIGH METAL PRODUCTS, TO SATISFY THE BOARD THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE TRADE UNION.

3. THE APPLICATION IS ACCORDINGLY DISMISSED.

12348-66-R: CORPORATION OF THE VILLAGE OF POINT EDWARD ARENA COMMISSION
(APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT).

-AND-

12349-66-R: VILLAGE OF POINT EDWARD PUBLIC WORKS DEPARTMENT (APPLICANT)
V. CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS D. W. FORGIE AND
J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: A. L. EDDY FOR THE APPLICANTS, T. E.
ARMSTRONG AND E. B. PARKER FOR THE RESPONDENT.

DECISION OF THE BOARD: (NOVEMBER 10, 1966).

1. THE APPLICANTS IN THE ABOVE MATTERS HAVE APPLIED FOR A DECLARATION
TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE
PROVISIONS OF SECTION 45(2) OF THE LABOUR RELATIONS ACT.

2. AT THE HEARING THE BOARD DIRECTED THAT THESE MATTERS BE TRIED
TOGETHER.

3. SECTION 45(2) OF THE ACT READS AS FOLLOWS:

WHERE A TRADE UNION THAT HAS GIVEN NOTICE UNDER SECTION
11 OR SECTION 40 OR THAT HAS RECEIVED NOTICE UNDER SECTION 40
FAILS TO COMMENCE TO BARGAIN WITHIN SIXTY DAYS FROM THE
GIVING OF THE NOTICE OR, AFTER HAVING COMMENCED TO BARGAIN
BUT BEFORE THE MINISTER HAS APPOINTED A CONCILIATION OFFICER
OR MEDIATOR, ALLOWS A PERIOD OF SIXTY DAYS TO ELAPSE DURING
WHICH IT HAS NOT SOUGHT TO BARGAIN, THE BOARD MAY, UPON THE
APPLICATION OF THE EMPLOYER OR OF ANY OF THE EMPLOYEES IN THE
BARGAINING UNIT AND WITH OR WITHOUT A REPRESENTATION VOTE,
DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES
IN THE BARGAINING UNIT.

4. THE BOARD IN THESE MATTERS MUST DETERMINE WHETHER OR NOT THE
RESPONDENT ALLOWED A PERIOD OF SIXTY DAYS TO ELAPSE DURING WHICH IT HAS
NOT SOUGHT TO BARGAIN. THE SIXTY DAY PERIOD REFERRED TO IN SECTION 45(2)
OF THE ACT IS THE SIXTY DAYS IMMEDIATELY PRECEDING THE MAKING OF THE
APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS. IF A TRADE
UNION HAVING SERVED NOTICE TO BARGAIN PERMITS SIXTY DAYS TO ELAPSE DURING
WHICH IT FAILS TO BARGAIN BUT SUBSEQUENTLY THE PARTIES DO, IN FACT, MEET
AND BARGAIN, AN EMPLOYER OR ANY GROUP OF EMPLOYEES CANNOT SUBSEQUENTLY BE
HEARD TO COMPLAIN THAT A SIXTY DAY PERIOD HAD ELAPSED PRIOR TO THE COMM-
ENCEMENT OF BARGAINING. THIS PROVISION IN THE ACT IS INTENDED TO PROVIDE
A REMEDY TO AN EMPLOYER OR EMPLOYEES, WHERE A TRADE UNION SLEEPS ON ITS
BARGAINING RIGHTS AND FAILS TO BARGAIN OR FAILS TO ATTEMPT TO BARGAIN.

5. BY THE SAME TOKEN, IF A TRADE UNION HAS PERMITTED SIXTY DAYS TO
ELAPSE DURING WHICH NO BARGAINING TAKES PLACE AND SUBSEQUENTLY SEEKS TO

BARGAIN PRIOR TO AN APPLICATION BEING MADE UNDER THE PROVISIONS OF SECTION 45(2) OF THE ACT THE BOARD WILL NOT TERMINATE THE BARGAINING RIGHTS. IN SUCH A CASE THE TRADE UNION CONCERNED HAS, IN FACT, TAKEN STEPS TO FORWARD THE INTEREST OF THE EMPLOYEES IT REPRESENTS PRIOR TO THE MAKING OF THE APPLICATION AND ACCORDINGLY NO PURPOSE WOULD BE SERVED BY TERMINATING ITS BARGAINING RIGHTS (SEE MOYER SAND (1965) LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1966, P. 913 AND THE CASES THEREIN REFERRED TO).

6. THE BOARD MUST THEREFORE DETERMINE WHETHER OR NOT THE RESPONDENT HAS BARGAINED OR HAS SOUGHT TO BARGAIN WITHIN SIXTY DAYS PRECEDING THE MAKING OF THESE APPLICATIONS.

7. A SUMMARY OF THE HISTORY OF BARGAINING BETWEEN THE PARTIES AS IT AFFECTS THIS APPLICATION IS SET OUT BELOW. THE RESPONDENT WAS CERTIFIED FOR ALL EMPLOYEES OF THE APPLICANTS WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT IN TWO SEPARATE CERTIFICATION PROCEEDINGS DURING THE MONTH OF SEPTEMBER 1965. BECAUSE THE APPLICANTS WERE REPRESENTED BY THE SAME BARGAINING COMMITTEE THE PARTIES AGREED THAT BARGAINING SHOULD PROCEED WITH RESPECT TO VILLAGE OF POINT EDWARD PUBLIC WORKS DEPARTMENT AND IF A COLLECTIVE AGREEMENT WAS CONCLUDED WITH RESPECT TO THAT APPLICANT IT WOULD BE APPLIED, WITH VARIATIONS, TO THE CORPORATION OF THE VILLAGE OF POINT EDWARD ARENA COMMISSION. THE LAST BARGAINING MEETING APPEARS TO HAVE BEEN HELD ON OR ABOUT JUNE 15TH, 1966 WHICH WAS FOLLOWED BY THE DELIVERY OF A DRAFT COLLECTIVE AGREEMENT ON JUNE 24TH, 1966. FURTHER INFORMATION WAS PROVIDED TO THE RESPONDENT UNION BY THE APPLICANT VILLAGE OF POINT EDWARD PUBLIC WORKS DEPARTMENT BY LETTER DATED JULY 21ST, 1966. THE RESPONDENT SPOKE TO THE CLERK-TREASURER OF THE VILLAGE OF POINT EDWARD ON THE TELEPHONE ON SEPTEMBER 8TH, 1966 AND REQUESTED A FURTHER BARGAINING MEETING AND ADVISED THAT IF SUCH A MEETING COULD NOT BE ARRANGED EXPEDITIOUSLY THE RESPONDENT WOULD SEEK CONCILIATION SERVICES. NO REPLY TO THE REQUEST WAS RECEIVED FROM EITHER OF THE APPLICANTS. ON SEPTEMBER 30TH, 1966 THE RESPONDENT WROTE A LETTER ADDRESSED TO THE CLERK-TREASURER OF THE VILLAGE OF POINT EDWARD AND AGAIN NO REPLY WAS RECEIVED AND NO ACTION WAS TAKEN BY EITHER OF THE APPLICANTS UNTIL THE INSTANT APPLICATIONS WERE MADE OCTOBER 17TH, 1966.

8. IT IS READILY APPARENT, THEREFORE, THAT THE RESPONDENT UNION SOUGHT TO BARGAIN DURING THE MONTH OF SEPTEMBER 1966, AND THEREFORE DID NOT ALLOW A PERIOD OF SIXTY DAYS TO ELAPSE IMMEDIATELY PRIOR TO THE MAKING OF THESE APPLICATIONS DURING WHICH IT HAS NOT SOUGHT TO BARGAIN. ACCORDINGLY, THE APPLICANTS HAVE FAILED TO ESTABLISH THE NECESSARY FACTS WHICH WOULD ENTITLE THEM TO THE RELIEF REQUESTED.

9. THESE APPLICATIONS ARE THEREFORE DISMISSED.

12415-66-R: EMPLOYEE'S OF - ACME ELECTRIC POLYGON LTD-DIVISION SERVICES LTD., 50 NORTHLINE RD., TORONTO ONT. (APPLICANTS) V. INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKER'S AFL-CIO-CLC. - LOCAL 541 (RESPONDENT).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: R. COLLETT FOR THE APPLICANTS, I. SCOTT AND J. OSBORNE FOR THE RESPONDENT.

DECISION OF THE BOARD: (NOVEMBER 23, 1966).

1. THIS IS AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS MADE PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT.

2. IN SUPPORT OF THE APPLICATION THERE WAS FILED WITH THE BOARD A DOCUMENT BEARING THE SIGNATURES OF 17 PERSONS PURPORTING TO BE EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT. IN ORDER TO SATISFY THE BOARD THAT THE DOCUMENT REPRESENTS A VOLUNTARY EXPRESSION ON THE PART OF THE EMPLOYEES WHO SIGNED IT THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT, IT IS INCUMBENT UPON THE APPLICANTS TO ADDUCE EVIDENCE WITH REGARD TO ITS ORIGINATION, PREPARATION AND CIRCULATION.

3. THE APPLICANTS WERE INFORMED OF THE EVIDENTIARY REQUIREMENTS OF THE BOARD BY REGISTERED LETTER FROM THE REGISTRAR DATED NOVEMBER 8TH, 1966 WHICH, IN PART, READS:

IT SHOULD BE NOTED THAT ANY EMPLOYEE OR REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY, OR PRODUCE A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED.

THE REPRESENTATIVE OF THE APPLICANTS WHO APPEARED AT THE BOARD HEARING IN THIS MATTER WAS UNABLE TO TESTIFY FROM HIS PERSONAL KNOWLEDGE AS TO THE CIRCUMSTANCES SURROUNDING THE ORIGINATION OF THE DOCUMENT FILED IN SUPPORT OF THE APPLICATION.

4. THE APPLICATION ACCORDINGLY IS DISMISSED.

INDEXED ENDORSEMENTS - SECTION 65

11557-65-U: LEONARD R. BOIVIN, MEMBER LOCAL 800, SUDBURY (COMPLAINANT)
V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND
PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 67, AND
NORMAN BEANLAND BUSINESS MANAGER OF LOCAL 67 (RESPONDENTS).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: WM. WEATHERUP, D. CLARK S. LEACHIE AND LEO BOIVIN FOR THE COMPLAINANT, AND NORMAN K. BEANLAND AND L. A. MACLEAN FOR THE RESPONDENTS.

DECISION OF THE BOARD: (NOVEMBER 25, 1966).

1. THE RESPONDENT TRADE UNION HAS REQUESTED THAT THE BOARD RECONSIDER ITS DECISION IN THIS MATTER, DATED OCTOBER 13, 1966. IN MAKING THIS REQUEST, COUNSEL FOR THE RESPONDENT STATED:-

(1) THAT IS IS MANIFEST FROM THE CONSTITUTION OF THE TRADE UNION THAT THE EXISTENCE AND FILING OF A "TRAVEL CARD" DOES NOT CONSTITUTE THE HOLDER A MEMBER OF THE LOCAL TO WHICH HE HAS A TRAVEL CARD.

(2) THAT THE BOARD HELD THAT THE RESPONDENT UNION HAD VIOLATED THE COLLECTIVE AGREEMENT IN REQUESTING THE EMPLOYER TO DISCHARGE THE AGGRIEVED PERSON AS A NON-MEMBER OF THE TRADE UNION.

(3) THAT THE BOARD HELD THAT IN PROCURING THE DISMISSAL OF THE AGGRIEVED PERSON THE RESPONDENT UNION HAD NOT COMMITTED ANY OFFENCE UNDER THE LABOUR RELATIONS ACT.

ON THE BASIS OF THOSE STATEMENTS, COUNSEL FOR THE RESPONDENT SUBMITTED:-

(A) "THAT EVEN IF THE BOARD HAD JURISDICTION UNDER THE LABOUR RELATIONS ACT TO INTERPRET THE COLLECTIVE AGREEMENT AND THE UNION CONSTITUTION IN THE CIRCUMSTANCES OF THIS CASE, THAT ITS INTERPRETATION THEREOF IS PLAINLY CONTRARY TO AND NOT BORNE OUT IN ANY WAY BY THE PLAIN LANGUAGE OF THESE TWO DOCUMENTS", AND THAT THE BOARD ERRED IN FINDING THAT THE RESPONDENT HAD VIOLATED THE TERMS OF THE COLLECTIVE AGREEMENT BY PROCURING THE DISMISSAL OF THE AGGRIEVED PERSON.

(B) THAT THE AGGRIEVED PERSON HAD NO LOCUS STANDI TO BASE A CLAIM UNDER SECTION 65 OF THE LABOUR RELATIONS ACT SOLELY ON AN ALLEGED BREACH OF THE COLLECTIVE AGREEMENT BY THEIR COLLECTIVE BARGAINING AGENT.

(C) THAT THE BOARD HAS ERRED IN ITS INTERPRETATION OF ITS STATUTORY POWERS UNDER THE LABOUR RELATIONS ACT IN DECIDING THAT EMPLOYEES CLAIMING TO BE AGGRIEVED BY A BREACH OF A COLLECTIVE AGREEMENT HAVE A RIGHT TO RELIEF UNDER SECTION 65 OF THE ACT.

(D) THAT THE BOARD, IN ITS DECISION IN THE INSTANT CASE, HAS ACTED CONTRARY TO THE PRINCIPLES AND REASONING ENUNCIATED IN THE HEIST INDUSTRIAL SERVICES CASE, 63 C.L.L.C. 1123.

2. HAVING REGARD TO THE SOMEWHAT UNUSUAL CIRCUMSTANCES OF THIS CASE, THE BOARD PROPOSES TO DEAL WITH THE MATTERS RAISED BY COUNSEL FOR THE RESPONDENT IN SOME DETAIL.

3. AS TO STATEMENT (1) ABOVE, WHICH COUNSEL HAS SET FORTH, IT CAN ONLY BE NOTED THAT THIS STATEMENT IS CONTRARY TO THE FACTS STATED BY THE PARTIES AT THE HEARING, WHICH WERE NOT THE SUBJECT OF DISPUTE, AND CONTRARY TO THE BOARD'S FINDINGS, SET OUT IN PARAGRAPH 2 OF THE ENDORSEMENT OF THE RECORD DATED OCTOBER 13, 1966, WHICH WERE BASED UPON THE EVIDENCE AND ARGUMENTS PRESENTED TO THE BOARD. THERE IS NOTHING IN COUNSEL'S SUBMISSION TO SUPPORT THE CHALLENGE TO THESE FINDINGS.

4. STATEMENTS (2) AND (3) ABOVE, WHICH COUNSEL HAS SET FORTH, ARE SUBSTANTIALLY CORRECT, STATEMENT (3) APPARENTLY BEING BASED UPON PARAGRAPH 9 OF THE ENDORSEMENT OF THE RECORD DATED OCTOBER 13, 1966.

5. SUBMISSION (A) ABOVE IS, LIKE STATEMENT (1) ABOVE, CONTRARY TO THE AGREED FACTS AND TO THE BOARD'S FINDINGS BASED UPON THE EVIDENCE. IT IS NOT SUGGESTED THAT EVIDENCE IS NOW AVAILABLE WHICH WOULD NOT HAVE BEEN AVAILABLE, WITH THE EXERCISE OF REASONABLE DILIGENCE, TO THE RESPONDENT AT THE TIME OF THE HEARING. IT SHOULD BE NOTED THAT THE BOARD DEALT WITH THE COLLECTIVE AGREEMENT AND THE UNION CONSTITUTION ONLY INsofar AS IT WAS NECESSARY TO DO SO IN THE COURSE OF DETERMINING THE FACTS MATERIAL TO THE AGGRIEVED PERSON'S CASE. THESE DOCUMENTS WERE CLEARLY ADMISSIBLE AND RELEVANT FOR THAT PURPOSE. COUNSEL'S SUBMISSION IN THIS REGARD IS WITHOUT FOUNDATION.

6. SUBMISSION (B) OF COUNSEL FOR THE RESPONDENT IS BASED UPON THE PREMISE THAT THE AGGRIEVED PERSONS ARE NOT PARTIES TO THE COLLECTIVE AGREEMENT. ALTHOUGH THIS IS SO, IT IS NOT MATERIAL TO THE INSTANT CASE. IN THE INSTANT CASE, THE BOARD HAS FOUND THAT THE AGGRIEVED PERSON WAS DEALT WITH BY THE RESPONDENTS CONTRARY TO THE LABOUR RELATIONS ACT. NO OBJECTION WAS RAISED AS TO THE STATUS OF THE AGGRIEVED PERSON TO MAKE A COMPLAINT PURSUANT TO SECTION 65 OF THE ACT.

7. AS TO SUBMISSION (C) MADE BY COUNSEL FOR THE RESPONDENT, COUNSEL ARGUES THAT "IT IS A STATUTORY CONDITION PRECEDENT TO THE OPERATION OF THE REMEDIAL PROVISIONS OF S.65, THAT THE AGGRIEVED EMPLOYEES HAVE SUFFERED AS A RESULT OF BEING DEALT WITH 'CONTRARY TO' THE ACT AND THAT THE WORDS 'CONTRARY TO' MEAN IN CONTRAVENTION OF A PROVISION OF THE ACT, SUCH AS WOULD CONSTITUTE AN OFFENCE UNDER S.69 OF THE ACT". THIS ISSUE IS DEALT WITH IN PARAGRAPH 9 OF THE ENDORSEMENT OF THE RECORD DATED OCTOBER 13, 1966. THE BOARD SEES NO REASON TO ALTER THE OPINION THERE SET FORTH.

8. AS TO SUBMISSION (D) MADE BY COUNSEL FOR THE RESPONDENT, IT IS CLEAR, AS THE BOARD SET OUT IN PARAGRAPH 10 OF THE ENDORSEMENT OF OCTOBER 13, THAT THE INSTANT CASE IS DISTINGUISHABLE FROM THE HEIST INDUSTRIAL SERVICES CASE, SUPRA. IN ANY EVENT, THE BOARD'S DECISION IN THE INSTANT CASE IS, IN OUR VIEW, CONSISTENT WITH EACH OF THE BOARD'S

CASES IN WHICH AN ISSUE SUCH AS THIS HAS BEEN REFERRED TO. THESE DECISIONS ARE CITED IN THE BOARD'S ENDORSEMENT DATED OCTOBER 13, 1966.

9. IT IS CLEAR FROM ALL OF THE FOREGOING THAT THE RESPONDENT HAS FAILED TO MAKE REFERENCE TO ANY MATTER WHICH MIGHT NOT PROPERLY HAVE BEEN RAISED AT THE FIRST HEARING OF THIS MATTER. NO SUBSTANTIAL GROUND HAS BEEN REFERRED TO WHICH WOULD LEAD THE BOARD TO RECONSIDER ITS DECISION IN THIS MATTER. THE REQUEST OF THE RESPONDENT IS ACCORDINGLY DENIED.

10. THE COMPLAINANT, PURSUANT TO PARAGRAPH 12 OF THE ENDORSEMENT OF THE RECORD DATED OCTOBER 13, 1966, HAS REQUESTED THAT THE BOARD DETERMINE THE AMOUNT OF COMPENSATION, IF ANY, PAYABLE TO HIM IN RESPECT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS. A HEARING FOR THIS PURPOSE WAS HELD ON NOVEMBER 10, 1966.

11. HAVING REGARD TO ALL OF THE EVIDENCE AND ARGUMENTS RELATING TO THIS ISSUE, THE BOARD'S DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:-

AS COMPENSATION FOR LOSS OF WAGES AND EMPLOYMENT BENEFITS,
THE RESPONDENTS SHALL FORTHWITH PAY TO LEONARD R. BOIVIN
THE SUM OF \$250.00.

12161-66-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. JET METAL PRODUCTS LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., AND OTTO URBANOVICS, FOR THE COMPLAINANT, AND JOHN P. SANDERSON AND K. ALEXANDER FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE: (NOVEMBER 15, 1966).

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2. THIS IS A COMPLAINT MADE UNDER SECTION 65 OF THE LABOUR RELATIONS ACT, ALLEGING THAT ON OR ABOUT AUGUST 25TH, 1966, GUISEPPE DIVENANZO AND JOSEPH POIRIER, HEREINAFTER CALLED THE GRIEVORS, WERE DEALT WITH BY MR. ISSY MONCARZ, PRODUCTION MANAGER OF THE RESPONDENT, CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT, IN THAT HE DID ON BEHALF OF THE RESPONDENT SUSPEND THE GRIEVORS BECAUSE THEY HAD ENGAGED IN UNION ACTIVITIES AND WERE EXERCISING THEIR RIGHTS UNDER THE LABOUR RELATIONS ACT. THE PARTIES AGREE THAT THE DURATION OF THE SUSPENSIONS WAS 34 1/2 HOURS IN EACH CASE.

3. ALL THE EVIDENCE WAS ADDUCED BY THE COMPLAINANT.

4. THE GRIEVOR GUISEPPE DIVENANZO IS CLASSIFIED AS A SPOT WELDER WITH A RATE OF \$2.00 PER HOUR. HE HAS BEEN EMPLOYED BY THE RESPONDENT FOR THREE YEARS. JOSEPH POIRIER, THE OTHER GRIEVOR, HAS BEEN EMPLOYED BY THE RESPONDENT FOR ONE AND ONE HALF YEARS. HE IS CLASSIFIED AS A SAMPLE MAKER AND IS PAID AT THE RATE OF \$2.50 PER HOUR.

5. TWO DAYS PRIOR TO THE DATE OF SUSPENSION, A NOTICE ADVISING THE EMPLOYEES OF THE RESPONDENT THAT AN APPLICATION FOR CERTIFICATION HAD BEEN MADE BY THE COMPLAINANT HEREIN, WAS POSTED IN THE RESPONDENT'S PLANT. AT ABOUT 7:30 ON THE MORNING OF THE POSTING UP OF THE NOTICE, MR. ISSY MONCARZ, PRODUCTION MANAGER, AND MR. BOB MOORE, FOREMAN, APPROACHED THE GRIEVOR POIRIER AT HIS WORK BENCH AND MOORE ASKED HIM IF HE HAD SEEN THE GREEN PAPER, THAT IS, THE NOTICE OF APPLICATION. A CONVERSATION DEVELOPED WITH RESPECT TO POIRIER'S EARNINGS. POIRIER WAS INVITED INTO THE OFFICE WHERE HE WAS TOLD THAT IF THE UNION CAME IN IT WOULD REDUCE THE WORK WEEK TO 40 HOURS. MONCARZ THEN INDICATED TO HIM HOW MUCH HE WOULD LOSE IN WAGES BY REASON OF THE SHORTER HOURS. IT WAS SUGGESTED TO POIRIER THAT HE WAS THE ONLY ONE WHO WOULD DO ANYTHING ABOUT THE UNION, AND IT WAS FURTHER SUGGESTED TO HIM THAT HE START UP A PETITION FOR THE EMPLOYEES TO SIGN. POIRIER TOLD THEM HE "WAS NOT GOING TO DO NOTHING". HE TOLD MONCARZ THEY WERE GOING TO HAVE A MEETING. THE LATTER REPLIED THAT THEY COULD HAVE FIFTY MEETINGS IF THEY WANTED.

6. IN REPLY TO A QUESTION FROM HIS COUNSEL, POIRIER FIRST STATED THAT HE BELIEVED HE HAD BEEN SELECTED BECAUSE HE WAS PRESIDENT OF THE UNION. HOWEVER, HE STATED LATER THAT MONCARZ DID NOT KNOW HE WAS PRESIDENT, BUT HE THOUGHT HE HAD BEEN SPOKEN TO BECAUSE HE WAS THE "HEAD GUY IN THE SHOP- I WAS MAKING MORE MONEY THAN ANYONE ELSE". THERE COULD BE NO DOUBT BUT THAT FOLLOWING THIS MEETING MONCARZ KNEW THAT POIRIER WAS IN FAVOUR OF THE UNION.

7. THAT SAME DAY DIVENANZO HAD A SIMILAR ENCOUNTER WITH MONCARZ, WHO CALLED HIM TO HIS OFFICE AT ABOUT 10:00 A.M. AND WENT THROUGH A LIKE SERIES OF CALCULATIONS DEMONSTRATING THE LOSS OF EARNINGS LIKELY TO RESULT IF THE UNION WAS ESTABLISHED IN THE PLANT. HE OFFERED DIVENANZO 10¢, WHICH CAN ONLY MEAN 10¢ PER HOUR, IF HE WOULD TALK TO THE ITALIAN EMPLOYEES AND GET UP A PETITION AGAINST THE UNION. DIVENANZO LEFT THE OFFICE AND NOTHING FURTHER OCCURRED THAT DAY.

8. ON THURSDAY, AUGUST 25TH, THE RESPONDENT COMPANY CAUSED A NOTICE TO BE POSTED ON THE BULLETIN BOARD INDICATING THAT A NIGHT SHIFT WAS TO BE INSTITUTED AND GIVING THE NAMES OF THE EMPLOYEES AFFECTED. THE APPEARANCE OF THIS NOTICE CAUSED CONSIDERABLE CONCERN AND UNREST AMONG THE EMPLOYEES. THE GRIEVORS DISCUSSED THE SITUATION AND DECIDED THAT THEY SHOULD ATTEMPT TO SEE THE UNION. POIRIER TOLD MOORE, THE FOREMAN, THAT HE WAS GOING OUT TO SEE THE UNION TO SEE IF THE COMPANY COULD "FORCE A NIGHT SHIFT ON US". THE UNCONTRADICTED EVIDENCE IS THAT THE FOREMAN REPLIED "O.K." DIVENANZO ALSO TOLD MOORE THAT HE WAS GOING OUT ABOUT 9:00.

9. THE GRIEVORS WENT TO THE UNION OFFICE AND RETURNED TO THE PLANT AT ABOUT 12:05, JUST AFTER THE START OF THE LUNCH PERIOD. MR. MONCARZ WAS ON

THE SHIPPING DOCK AND, THE EVIDENCE IS, SAID TO THE GRIEVORS, "YOU GUYS ARE SUSPENDED FOR FOUR DAYS. YOU FORGOT TO PUNCH YOUR CARDS". DIVENANZO SAID, "LISTEN, MANY TIMES BEFORE THIS HAPPENS". MONCARZ REPLIED, "THAT DOES NOT MATTER".

10. THE EVIDENCE OF THE GRIEVORS, TOGETHER WITH THAT OF TWO OTHER EMPLOYEES, INDICATES THAT, FROM TIME TO TIME, EMPLOYEES HAD TAKEN TIME OFF WORK FOR VARIOUS REASONS AFTER FIRST SEEKING PERMISSION FROM THE FOREMAN, MOORE, AND HAD NOT, IN THESE CIRCUMSTANCES, PUNCHED OUT ON THE TIME CLOCK. NO DISCIPLINARY ACTION HAD EVER FOLLOWED AS A RESULT OF THIS CONDUCT. AT THE SAME TIME ALL WITNESSES ADMITTED, ON CROSS-EXAMINATION, THAT THEY SHOULD HAVE PUNCHED OUT. THE GRIEVORS BOTH STATED THAT THEY HAD FORGOTTEN TO PUNCH OUT, ALTHOUGH THEY TOOK THE POSITION THAT GETTING THE FOREMAN'S PERMISSION RELIEVED THEM OF ANY REAL OBLIGATION IN THIS REGARD, SINCE THEY HAD FOLLOWED THIS COURSE PREVIOUSLY WITH IMPUNITY. ON THE BASIS OF ALL THE EVIDENCE ON THIS ASPECT OF THE CASE, IT MUST BE CONCLUDED THAT, AT THE LEAST, A VERY LOOSE PRACTICE HAD GROWN UP AND WAS TOLERATED BY THE RESPONDENT WITH RESPECT TO FAILURE TO PUNCH OUT WHERE PERMISSION TO LEAVE HAD BEEN GRANTED BY MOORE, AND THAT EMPLOYEES TOOK ADVANTAGE OF THE SITUATION, ALTHOUGH REMAINING CONSCIOUS OF THE FACT THAT THEY WERE GETTING AWAY WITH SOMETHING NOTWITHSTANDING THE PERMISSION.

11. THE PREVIOUS LAXITY ON THE PART OF THE RESPONDENT WITH RESPECT TO THE MATTER OF PUNCHING OUT AND THE COMPLETE ABSENCE OF ANY EVIDENCE OFFERING AN EXPLANATION AS TO WHY THE SUDDEN CHANGE IN THE CUSTOMARY PROCEDURE WAS INSTITUTED AT THE TIME AND IN THE CIRCUMSTANCES IN WHICH IT WAS, LEADS DIRECTLY TO THE FINDING THAT THE IMPOSITION OF PENALTIES IN THIS CASE WAS NOT MERELY COINCIDENTAL WITH THE ADVENT OF THE UNION'S APPLICATION FOR BARGAINING RIGHTS, BUT AROSE OUT OF IT. WHEN THERE IS COUPLED WITH THE FOREGOING MONCARZ'S DEMONSTRATED ANTIPATHY TOWARDS THE UNION AND THE FACT THAT HIS EFFORTS TO RECRUIT THE TWO GRIEVORS AS ALLIES IN OPPOSING THE UNION WERE REBUFFED BY THEM, THE INESCAPABLE CONCLUSION IS THAT THE SUSPENSIONS WERE IMPOSED UPON EACH OF THE GRIEVORS BECAUSE OF THEIR UNION ACTIVITY AND IN CONTRAVENTION OF THE LABOUR RELATIONS ACT, AND THE BOARD SO FINDS.

12. IN REACHING ITS DECISION, THE BOARD IS NOT OVERLOOKING THE FACT THAT MOORE GAVE THE GRIEVORS PERMISSION TO LEAVE, KNOWING THAT THEY WERE GOING TO SEE THE UNION. HOWEVER, THE DOMINANT AND PREVAILING DECISION IN THE MATTER WAS MADE BY MONCARZ, WHOSE CONDUCT THROUGHOUT INDICATED A REAL AND ACTIVE BIAS AGAINST THE UNION AND WHO ACTED THROUGHOUT ON BEHALF OF THE RESPONDENT.

13. THE BOARD'S DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:-

THE RESPONDENT SHALL FORTHWITH PAY TO THE GRIEVOR
GUISEPPE DIVENANZO THE SUM OF \$69.00 FOR WAGES
LOST DURING HIS SUSPENSION.

THE RESPONDENT SHALL FORTHWITH PAY JOSEPH POIRIER THE SUM OF \$86.25 FOR WAGES LOST DURING HIS SUSPENSION.

DECISION OF BOARD MEMBER H. F. IRWIN: (NOVEMBER 15, 1966).

1. I DISSENT.

2. THE TWO EMPLOYEES, GUISEPPE DIVENANZO AND JOSEPH POIRIER, AT THEIR REQUEST WERE GRANTED TIME OFF FROM WORK AT 9:00 A.M. TO GO TO THE OFFICE OF THE APPLICANT UNION TO DISCUSS WITH UNION OFFICIALS IF THE COMPANY HAD THE RIGHT TO ESTABLISH A NIGHT SHIFT AT THIS TIME. BY GRANTING SUCH LEAVE OF ABSENCE, THE COMPANY LOST A TOTAL OF SIX HOURS PRODUCTION BY TWO OF THEIR MOST HIGHLY SKILLED WORKERS. THIS IS VERY GENEROUS TREATMENT UPON THE PART OF THE COMPANY. IF THE EMPLOYER HAD BEEN HOSTILE OR VINDICATIVE TOWARDS THESE EMPLOYEES BECAUSE OF THEIR ACTIVITIES ON BEHALF OF THE UNION, IT WOULD HAVE UNHESITATINGLY AND BLUNTLY REFUSED THE LEAVE REQUESTED AND THERE WOULD HAVE BEEN NO CAUSE FOR COMPLAINT.

3. THE TWO EMPLOYEES TESTIFIED AT THE HEARING THAT THEY WERE FULLY AWARE THAT THE COMPANY'S RULES REQUIRED THEM TO CLOCK-OUT WHEN LEAVING THE PLANT BUT THEY FORGOT TO DO SO. ON THEIR RETURN TO THE PLANT AT 12:10 P.M., THE COMPANY SUSPENDED THEM FOR FOUR DAYS FOR THEIR FAILURE TO CLOCK-OUT WHEN THEY LEFT THEIR WORK AT 9:00 A.M. THEY BROUGHT THIS PENALTY ON THEMSELVES AND CANNOT COMPLAIN OF THE COMPANY TAKING DISCIPLINARY ACTION AGAINST THEM. IT IS NOT THE FUNCTION OF THIS BOARD TO DECIDE IF THE DISCIPLINARY ACTION WAS TOO HARSH BUT ONLY IF SUCH ACTION WAS TAKEN CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT.

4. THE BOARD HAS CONSISTENTLY HELD THAT THERE IS A HEAVY ONUS ON THE COMPLAINANT TO ESTABLISH THAT THE EMPLOYEE OR EMPLOYEES CONCERNED HAVE BEEN DEALT WITH CONTRARY TO THE LABOUR RELATIONS ACT. IN THE INSTANT CASE, THE COMPLAINANT HAS FAILED TO DO THIS AND I WOULD HAVE DISMISSED THE COMPLAINT.

12288-66-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION, LOCAL 220, 482 YORK ST., LONDON, ONTARIO (COMPLAINANT) V. NORVIEW HOME FOR THE AGED, HIGHWAY #3, SIMCOE, ONTARIO (RESPONDENT).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: JOHN M. ASKIN FOR THE COMPLAINANT, S. D. BOWMAN AND D. E. SCHOTT FOR THE RESPONDENT.

DECISION OF THE BOARD: (NOVEMBER 10, 1966).

1. THIS IS A COMPLAINT FOR RELIEF PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT COMPLAINS THAT ON OR ABOUT SEPTEMBER 30TH, 1966 THE RESPONDENT DISCHARGED THE AGGRIEVED PERSON BARBARA SMITH BECAUSE OF HER ACTIVITIES ON BEHALF OF THE COMPLAINANT TRADE UNION IN CONTRAVENTION OF SECTION 50(A) OF THE LABOUR RELATIONS ACT.

THE EVIDENCE IS THAT BARBARA SMITH WHO IS A QUALIFIED REGISTERED NURSING ASSISTANT WAS HIRED BY THE RESPONDENT EARLY IN SEPTEMBER OF THIS YEAR. PREVIOUSLY SHE HAD BEEN EMPLOYED AT THE NORFOLK GENERAL HOSPITAL, WHERE AT AN EARLIER PERIOD SHE HAD RECEIVED HER TRAINING. MRS. SMITH TESTIFIED THAT THERE HAD BEEN NO COMPLAINTS CONCERNING HER WORK AT THE HOSPITAL AND THAT SHE HAD VOLUNTARILY TERMINATED HER EMPLOYMENT THERE. WHILE SHE WAS WORKING AT THE HOSPITAL THE COMPLAINANT UNION CONDUCTED AN ORGANIZING CAMPAIGN AMONG THE EMPLOYEES AND SUBSEQUENTLY APPLIED TO AND WAS CERTIFIED BY THE BOARD AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES AT THE HOSPITAL ON SEPTEMBER 12TH, 1966. WHILE SHE WAS AN EMPLOYEE AT THE HOSPITAL MRS. SMITH JOINED THE COMPLAINANT UNION.

3. ON THE EVENING OF SEPTEMBER 22ND, 1966, ALTHOUGH SHE WAS WORKING FOR THE RESPONDENT, MRS. SMITH TESTIFIED THAT SHE ATTENDED A MEETING OF THE UNION MEMBERS OF THE HOSPITAL BARGAINING UNIT. AT THAT MEETING SHE WAS APPROACHED BY JOHN ASKIN, A BUSINESS AGENT FOR THE UNION, WHO ENLISTED HER SUPPORT IN ORGANIZING THE EMPLOYEES OF THE RESPONDENT. ON THE FOLLOWING TUESDAY, SEPTEMBER 27TH, ASKIN REQUESTED HER TO HOLD A MEETING AT HER HOME ON THE FOLLOWING EVENING AND TO INVITE EMPLOYEES OF THE RESPONDENT WHO WERE INTERESTED IN JOINING THE UNION. MRS. SMITH AGREED TO DO SO. HER EVIDENCE IS THAT THE FOLLOWING DAY SHE APPROACHED EMPLOYEES OF THE RESPONDENT AND ASKED A NUMBER OF THEM TO HER HOME THAT EVENING. AT THAT MEETING, WHICH WAS ALSO ATTENDED BY ASKIN, AN ORGANIZING CAMPAIGN WAS PLANNED. ON THE NEXT DAY, SEPTEMBER 29TH, MRS. SMITH TESTIFIED THAT SHE SOLICITED SUPPORT FOR THE UNION AMONG THE EMPLOYEES OF THE RESPONDENT DURING THE COFFEE BREAKS AND THE LUNCH PERIOD. ON THE FOLLOWING MORNING, SEPTEMBER 30TH, MRS. SMITH WAS CALLED TO THE OFFICE OF MARCIA BURKHOLDER, THE SUPERINTENDENT OF THE RESPONDENT HOME. MRS. BURKHOLDER INFORMED MRS. SMITH THAT SHE WAS DISCHARGED, EFFECTIVE IMMEDIATELY AND GAVE HER TWO WEEKS SEVERANCE PAY.

4. THE EVIDENCE OF MRS. BURKHOLDER IS THAT AFTER OBSERVING HER SHE DECIDED MRS. SMITH DID NOT HAVE THE PROPER ATTITUDE FOR THE JOB. MOREOVER, SHE HEARD A RUMOUR THAT MRS. SMITH WAS NOT GETTING ALONG WITH VIOLET ECKER, ONE OF THE REGISTERED NURSES, AND THAT AS A RESULT MRS. ECKER WAS CONTEMPLATING RESIGNING HER JOB. MRS. BURKHOLDER TESTIFIED THAT ONE FRIDAY MORNING SEPTEMBER 30TH, SHE COMMUNICATED WITH DONALD SCHOTT, THE CHAIRMAN OF THE BOARD OF THE RESPONDENT HOME TO GET HIS APPROVAL TO DISCHARGE MRS. SMITH. ACCORDING TO SCHOTT, HE PLACED THE MATTER BEFORE THE COMMITTEE OF THE RESPONDENT HOME WHICH WAS MEETING THAT MORNING AND THE COUNCIL APPROVED THE DISCHARGE OF MRS. SMITH. SCHOTT CONVEYED THIS INFORMATION TO MRS. BURKHOLDER WHO THEREUPON DISCHARGED MRS. SMITH.

5. THE EVIDENCE OF BERNICE SCOTT, THE HEAD NURSE, UNDER WHOSE SUPERVISION MRS. SMITH WORKED, IS THAT SHE HEARD A RUMOUR DURING MRS. SMITH'S SECOND WEEK OF EMPLOYMENT THAT SHE HAD MADE A REMARK TO A FELLOW EMPLOYEE WHICH OFFENDED THAT EMPLOYEE. MRS. SCOTT TESTIFIED THAT SHE DID NOT ATTEMPT TO CONFIRM THE RUMOUR BUT DID COUNSEL MRS. SMITH IN A FRIENDLY WAY CONCERNING HER RELATIONS WITH OTHER EMPLOYEES.

MRS. SCOTT'S EVIDENCE IS, HOWEVER, THAT IN THE PERFORMANCE OF HER JOB MRS. SMITH WAS A SATISFACTORY EMPLOYEE. MRS. SCOTT WAS NOT CONSULTED BY MRS. BURKHOLDER PRIOR TO MRS. SMITH'S DISCHARGE AND MRS. SCOTT'S EVIDENCE IS THAT SHE WAS UPSET WHEN SHE LEARNED OF IT FROM MRS. SMITH.

6. ALTHOUGH MRS. BURKHOLDER ADMITTED IT WAS VERY DIFFICULT TO GET QUALIFIED REGISTERED NURSING ASSISTANTS SHE SUDDENLY DISCHARGED MRS. SMITH WITHOUT VERIFYING MRS. ECKER'S INTENTION OR WITHOUT CONSULTING WITH MRS. SCOTT. FURTHER, DESPITE THE DIFFICULTY IN SECURING QUALIFIED NURSING STAFF MRS. SMITH WAS NOT GIVEN THE OPTION OF WORKING OUT ANY PERIOD OF NOTICE SO AS TO GIVE THE RESPONDENT AN OPPORTUNITY OF FINDING A REPLACEMENT. SUCH AN ARRANGEMENT WOULD APPEAR TO HAVE BEEN LOGICAL SINCE THE ALLEGED REASON FOR HER DISCHARGE WAS BECAUSE OF HER ATTITUDE AND NOT INCOMPETENCE IN HER WORK. WE WOULD ADD THAT MRS. BURKHOLDER ADMITTED IN HER EVIDENCE THAT NONE OF THE PATIENTS OF THE HOME HAD REGISTERED ANY COMPLAINT AGAINST MRS. SMITH. MOREOVER, ALTHOUGH MRS. BURKHOLDER TESTIFIED SHE FORMED AN UNFAVOURABLE IMPRESSION OF MRS. SMITH WITH REGARD TO HER SUITABILITY FOR EMPLOYMENT, MRS. BURKHOLDER GAVE HER TWO WEEKS SEVERANCE PAY. MRS. SMITH, WE WOULD POINT OUT, WAS HIRED AS A PROBATIONARY EMPLOYEE FOR A THREE MONTH PERIOD AND HAD COMPLETED LESS THAN A MONTH OF THAT PERIOD.

7. ALTHOUGH MRS. SMITH WAS ONLY A PROBATIONARY EMPLOYEE OF LESS THAN A MONTH'S STANDING MRS. BURKHOLDER APPARENTLY FELT IT WAS NECESSARY TO GET THE APPROVAL OF THE CHAIRMAN OF THE BOARD BEFORE DISCHARGING HER. MRS. BURKHOLDER IN HER TESTIMONY CLAIMED THAT THIS WAS STANDARD PROCEDURE. MR. SCHOTT, FOR HIS PART, APPARENTLY THOUGHT THAT THE QUESTION OF MRS. SMITH'S DISCHARGE MERITED THE ATTENTION OF AND A DECISION BY THE WHOLE COMMITTEE. WE WOULD MENTION THAT SUBSEQUENT TO HER DISCHARGE BY THE RESPONDENT, MRS. SMITH APPLIED FOR A JOB AT THE NORFOLK GENERAL HOSPITAL BUT WAS INFORMED THAT THERE WAS NO VACANCY FOR A REGISTERED NURSING ASSISTANT. ON PREVIOUS OCCASIONS SHE HAD NO DIFFICULTY IN SECURING EMPLOYMENT AT THE HOSPITAL. MR. SCHOTT TESTIFIED THAT HE WAS A MEMBER OF THE HOSPITAL BOARD AS WELL AS BEING CHAIRMAN OF THE BOARD OF THE RESPONDENT HOME.

8. WE WOULD ALSO COMMENT ON THE SEQUENCE OF EVENTS IN THIS MATTER AS REVEALED BY THE EVIDENCE. ON THE EVENING OF SEPTEMBER 28TH, MRS. SMITH HELD A MEETING AT HER HOME ATTENDED BY MR. ASKIN AND SOME EMPLOYEES OF THE RESPONDENT AT WHICH TIME THE UNION'S ORGANIZATIONAL CAMPAIGN WAS PLANNED. ON BOTH THAT DAY AND ON SEPTEMBER 29TH, MRS. SMITH ACTIVELY SOLICITED SUPPORT AMONG THE EMPLOYEES OF THE RESPONDENT. (WE NOTE THAT THE RESPONDENT DID NOT ALLEGE THAT MRS. SMITH WAS DISCHARGED BECAUSE SHE WAS SOLICITING SUPPORT FOR THE UNION AT HER PLACE OF WORK). ON THE MORNING OF SEPTEMBER 30TH, WITHOUT ANY WARNING, SHE WAS SUDDENLY DISCHARGED FROM HER JOB, THE DISCHARGE BECOMING EFFECTIVE IMMEDIATELY.

9. IN LIGHT OF ALL THE CIRCUMSTANCES AND THE SEQUENCE OF EVENTS, WE ARE IMPELLED TO FIND THAT MRS. SMITH'S DISCHARGE WAS NOT PROMPTED BY THE REASONS GIVEN BY MRS. BURKHOLDER. WE WOULD EMPHASIZE THAT IN THIS COMPLAINT THE BOARD IS INTERESTED IN THE REASONS PROFFERED FOR THE DISCHARGE OF MRS. SMITH, NOT FOR THE PURPOSE OF MAKING AN ADJUDICATION AS TO

WHETHER THE DISCHARGE WAS JUSTIFIED ON ITS MERITS, BUT ONLY AS THOSE REASONS ASSIST THE BOARD IN DETERMINING THE SOLE ISSUE BEFORE IT, NAMELY, WHETHER MRS. SMITH WAS DISCHARGED BECAUSE OF HER UNION ACTIVITIES. ON THE BASIS OF ALL THE EVIDENCE WE ARE ONLY ABLE TO CONCLUDE THAT THE RESPONDENT WAS AWARE OF MRS. SMITH'S ACTIVITIES ON SEPTEMBER 28TH AND 29TH AND DISCHARGED HER ON SEPTEMBER 30TH BECAUSE OF HER ORGANIZING EFFORTS ON BEHALF OF THE COMPLAINANT UNION AT THE RESPONDENT HOME. WE ACCORDINGLY FIND THAT MRS. SMITH WAS DISCHARGED BY THE RESPONDENT IN CONTRAVENTION OF SECTION 50(A) OF THE LABOUR RELATIONS ACT.

10. OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:

- (1) THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY BARBARA SMITH TO THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS SHE HAD, AND RECEIVED, PRIOR TO AND UP TO THE TIME OF HER DISCHARGE ON SEPTEMBER 30TH, 1966.
- (2) AS COMPENSATION FOR HER LOSS OF WAGES AND EMPLOYMENT BENEFITS FROM SEPTEMBER 30TH, 1966 TO AND INCLUDING NOVEMBER 4TH, TAKING INTO ACCOUNT SEVERANCE PAY GIVEN TO HER BY THE RESPONDENT, THE RESPONDENT SHALL FORTHWITH PAY TO BARBARA SMITH THE SUM OF \$160.00.
- (3) THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW SUSTAINED OR WHICH MAY HEREAFTER BE SUSTAINED BY BARBARA SMITH BETWEEN THE DATE OF THE HEARING ON NOVEMBER 4TH, AND THE DATE OF HER ACTUAL RE-EMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF ANY SUCH FURTHER COMPENSATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.

12341-66-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. NORTH AMERICAN PLASTICS LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: R. WHITE, J. PAWSON AND K. SIMPSON FOR THE COMPLAINANT, C. J. CLARK, Q.C., AND R. GRIMM FOR THE RESPONDENT.

DECISION OF J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFE:
(NOVEMBER 23, 1966).

1. THIS IS A COMPLAINT FOR RELIEF PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT COMPLAINS THAT ON OR ABOUT OCTOBER 12TH, 1966, THE RESPONDENT DISCHARGED THE AGGRIEVED PERSON YOLANDE MAZUR BECAUSE OF HER ACTIVITIES ON BEHALF OF THE COMPLAINANT TRADE UNION IN CONTRAVENTION OF SECTION 50 OF THE LABOUR RELATIONS ACT.

2. YOLANDE MAZUR'S EVIDENCE IS THAT SHE COMMENCED WORKING FOR THE RESPONDENT TOWARDS THE END OF AUGUST 1966. WITH THE EXCEPTION OF A PERIOD OF APPROXIMATELY TWO WEEKS WHEN SHE WAS DOING "PAINT SPOTTING" SHE WORKED ON AN ASSEMBLY LINE ON THE NIGHT SHIFT DOING VINYL COVERING. ON A FEW OCCASIONS, ACCORDING TO HER EVIDENCE, SHE OPERATED MACHINES DOING STAPLING AND PUNCHING HOLES IN PLASTIC. DURING THE LAST WEEK OF HER EMPLOYMENT WITH THE RESPONDENT FOUR FRENCH-SPEAKING GIRLS WERE HIRED ON HER LINE. MRS. MAZUR TESTIFIED THAT SHE WAS CALLED UPON TO TEACH THEM HOW TO DO THIS WORK AND TO ACT AS AN INTERPRETER FOR THEM.

3. MRS. MAZUR'S EVIDENCE IS THAT SHE ASSISTED HER HUSBAND ALPHONSE MAZUR IN THE ORGANIZING CAMPAIGN CONDUCTED BY THE COMPLAINANT UNION AMONG THE EMPLOYEES OF THE RESPONDENT. SHE TESTIFIED THAT DURING THE LAST WEEK OF HER EMPLOYMENT SHE SPOKE TO THE FRENCH-SPEAKING GIRLS WHO HAD JUST BEEN HIRED ABOUT JOINING THE UNION. ALPHONSE MAZUR, WHO IS FINANCIAL SECRETARY OF LOCAL 251 OF THE UAW IN WALLACEBURG, STATED THAT HE HAD BEEN ACTIVE IN THE UNION'S ORGANIZING CAMPAIGN AT THE RESPONDENT'S PLANT AND THAT HIS WIFE YOLANDE HAD ASSISTED HIM BY PROVIDING NAMES AND ADDRESSES OF EMPLOYEES. ALSO SHE HAD MADE CALLS WITH HIM TO EMPLOYEES' HOMES WHEN HE WAS SOLICITING UNION MEMBERSHIP.

4. ALPHONSE MAZUR TESTIFIED THAT IN THE HOUR PRIOR TO THE COMMENCEMENT OF THE DAY SHIFT (7:30 A.M. TO 4:00 P.M.) AND THE NIGHT SHIFT (4:30 P.M. TO 1:00 A.M.) HE AND JACK PAWSON, AN INTERNATIONAL REPRESENTATIVE OF THE UAW DISTRIBUTED LEAFLETS URGING THE EMPLOYEES TO SUPPORT THE UNION AT THE FRONT ENTRANCE OF THE RESPONDENT'S PLANT. MAZUR STATED THAT WHILE HE WAS DISTRIBUTING THE LEAFLETS IN THE MORNING HE ENCOUNTERED PETER HERRMANN, THE PRODUCTION SUPERVISOR, AND ANOTHER MEMBER OF THE MANAGEMENT OF THE RESPONDENT. IN BOTH THE MORNING AND AFTERNOON, ACCORDING TO HIS EVIDENCE, THE COMPANY'S SECURITY GUARD WAS PRESENT. MAZUR TESTIFIED THAT HE HAD DRIVEN HIS WIFE TO THE PLANT AND LET HER OUT OF THE CAR IN FRONT OF THE PLANT ENTRANCE JUST PRIOR TO HIS PROCEEDING TO DISTRIBUTE LEAFLETS TO THOSE EMPLOYEES GOING ON THE NIGHT SHIFT. MRS. MAZUR CONFIRMED HER HUSBAND'S TESTIMONY THAT HE HAD DRIVEN HER TO WORK ON THE AFTERNOON OF OCTOBER 12TH.

5. JACK PAWSON TESTIFIED THAT ALONG WITH MAZUR HE HAD DISTRIBUTED LEAFLETS TO EMPLOYEES AT THE PLANT ENTRANCE PRIOR TO THE COMMENCEMENT OF THE DAY AND NIGHT SHIFTS. PAWSON'S EVIDENCE IS THAT HE ENCOUNTERED BOTH HERRMANN AND ROBERT GRIMM, THE PLANT MANAGER, ON THESE OCCASIONS. PAWSON WENT ON TO TESTIFY THAT A COMPANY BUS CARRYING FEMALE EMPLOYEES FROM SARNIA ENTERED THE PLANT GATES JUST PRIOR TO THE BEGINNING OF THE NIGHT

SHIFT. PAWSON SAID THAT WHEN THE BUS STOPPED AND WHILE THE GIRLS WERE DISEMBARKING HE WENT ON TO THE PLANT PREMISES AND BEGAN GIVING LEAFLETS TO THEM. ACCORDING TO HIS EVIDENCE, GRIMM IMMEDIATELY APPEARED ON THE SCENE AND SHOUTED AT HIM TO GET OFF THE RESPONDENT'S PROPERTY. PAWSON TESTIFIED THAT GRIMM ALSO TOLD THE GIRLS TO THROW AWAY THE LEAFLETS. GRIMM ADMITTED THAT HE TOLD PAWSON TO GET OFF THE PREMISES BUT DENIED TELLING THE GIRLS TO THROW AWAY THE LEAFLETS. PAWSON, AS WELL, STATED IN HIS EVIDENCE THAT GRIMM TOLD HIM THAT HE (GRIMM) WAS GOING TO CALL THE POLICE. ACCORDING TO PAWSON AND HERRMANN THE POLICE DID ARRIVE ON THE SCENE SHORTLY THEREAFTER.

6. BOTH GRIMM AND HERRMANN TESTIFIED THAT THEY WATCHED PAWSON AND MAZUR DISTRIBUTING THEIR LEAFLETS FROM A WINDOW OF THE PLANT IN THE MORNING AND IN THE AFTERNOON. HERRMANN ORIGINALLY TESTIFIED THAT AT THE TIME HE DID NOT KNOW WHO MAZUR WAS. IN CROSS-EXAMINATION, HOWEVER, HE ADMITTED THAT WHILE WATCHING PAWSON AND MAZUR THROUGH THE WINDOW, SOMEONE DID IDENTIFY MAZUR. GRIMM DENIED THAT HE KNEW WHO MAZUR WAS ON OCTOBER 12TH. HE ADMITTED, HOWEVER, THAT HERRMANN WAS WITH HIM WATCHING THE TWO MEN AT THE PLANT ENTRANCE. HERRMANN AT FIRST DENIED THAT HE HAD ANY DISCUSSION ABOUT THE UNION WITH GRIMM OR PETER WALKER, THE SUPERVISOR OF PRODUCTION, ON THAT AFTERNOON. IN CROSS-EXAMINATION, HOWEVER, HE ADMITTED THAT THERE HAD BEEN SOME DISCUSSION BUT THAT HE COULD NOT REMEMBER THE CONTENT OF THE CONVERSATIONS.

7. GRIMM AND HERRMANN TESTIFIED THAT MRS. MAZUR'S MOTHER WHO WAS EMPLOYED ON THE SAME TYPE OF ASSEMBLY LINE AS HER DAUGHTER ON THE DAY SHIFT WAS DISCHARGED AT THE END OF THE DAY SHIFT ON OCTOBER 12TH. BOTH DENIED THAT THEY WERE AWARE OF HER RELATIONSHIP TO ALPHONSE MAZUR. HERRMANN'S EXPLANATION FOR HER DISCHARGE WAS THAT, ALTHOUGH SHE WAS A SATISFACTORY WORKER, SHE WAS LET GO TO MAKE ROOM FOR BETTER WORKERS WHO WERE BEING TRANSFERRED FROM THE NIGHT SHIFT LINE. THERE IS EVIDENCE THAT SOME TIME LATER MRS. MAZUR'S MOTHER APPROACHED GRIMM AND ASKED FOR HER JOB BACK AND GRIMM RE-INSTATED HER IN HER FORMER JOB.

8. JOHN HERREWEYER, THE LINE LEADER ON THE NIGHT SHIFT, TESTIFIED THAT TOWARDS THE END OF THE SHIFT WHICH HAD COMMENCED ON THE AFTERNOON OF OCTOBER 12TH, HERRMANN APPROACHED HIM AND ASKED IF MRS. MAZUR WORKED ON HIS LINE. HERREWEYER'S EVIDENCE IS THAT HE TOLD HERRMANN HE DID NOT KNOW THE GIRLS BY THEIR LAST NAME. HERREWEYER STATED THAT HERRMANN LEFT AND RETURNED A SHORT WHILE LATER AND TOLD HIM THAT MRS. MAZUR'S FIRST NAME WAS YOLANDE AND THAT SHE DID WORK ON HERREWEYER'S LINE. HERREWEYER TESTIFIED THAT HE POINTED OUT YOLANDE MAZUR AND AT THE SAME TIME ASKED HERRMANN IF SHE WAS ALPHONSE MAZUR'S WIFE. ACCORDING TO HERREWEYER, HERRMANN ANSWERED IN THE AFFIRMATIVE. HERREWEYER'S EVIDENCE IS THAT HERRMANN THEN ASKED IF THERE WERE ANY GIRLS ON THE LINE WHO WERE NOT DOING GOOD WORK. HERREWEYER SAID HE SINGLED OUT ONE OF THE EMPLOYEES. HERREWEYER TESTIFIED THAT HERRMANN ASKED HERREWEYER TO SEND BOTH MRS. MAZUR AND THE OTHER EMPLOYEE TO HIS OFFICE.

9. MRS. MAZUR TESTIFIED THAT AT APPROXIMATELY 12:40 A.M. IN THE EARLY MORNING OF OCTOBER 13TH, JUST PRIOR TO THE END OF THE SHIFT, SHE WAS INFORMED BY HERREWEYER THAT HERRMANN WANTED TO SEE HER IN HIS OFFICE.

ACCORDING TO HER EVIDENCE ANOTHER EMPLOYEE FROM THE LINE WAS SUMMONED TO HERRMANN'S OFFICE AT THE SAME TIME. MRS. MAZUR TESTIFIED THAT HERRMANN TOLD BOTH OF THEM THAT THE RESPONDENT WAS CUTTING BACK PRODUCTION AND THAT ACCORDINGLY THEY WERE BEING DISCHARGED, EFFECTIVE IMMEDIATELY. HERRMANN'S EVIDENCE IN THIS REGARD CONFIRMS THAT OF MRS. MAZUR.

10. GRIMM TESTIFIED THAT THE DECISION TO CLOSE DOWN THE ASSEMBLY LINE ON THE NIGHT SHIFT HAD BEEN MADE A MONTH PRIOR TO OCTOBER 12TH. HERRMANN'S EVIDENCE IS THAT THE ASSEMBLY LINE ON WHICH MRS. MAZUR WAS WORKING, IN FACT, WAS CLOSED DOWN AT THE END OF THE NIGHT SHIFT ON OCTOBER 14TH. HE ADMITTED THAT THE REST OF THE EMPLOYEES ON THE NIGHT SHIFT ASSEMBLY LINE, INCLUDING THE FOUR FRENCH-SPEAKING GIRLS WHO HAD BEEN EMPLOYED FOR A WEEK, CONTINUED TO WORK ON THAT SHIFT UNTIL OCTOBER 14TH AND THAT ALL OF THESE EMPLOYEES WERE THEN TRANSFERRED TO THE SAME LINE ON THE DAY SHIFT.

11. WE CONCLUDE FROM THE EVIDENCE THAT GRIMM AND HERRMANN TOGETHER WATCHED PAWSON AND MAZUR DISTRIBUTING UNION LEAFLETS AT THE PLANT ENTRANCE IN THE MORNING AND THE AFTERNOON FROM A WINDOW IN THE PLANT. SINCE GRIMM RAN TO THE PLANT ENTRANCE AND ORDERED PAWSON OFF COMPANY PROPERTY WHEN THE BUS FROM SARNIA ENTERED THE GATES, IT IS NOT UNREASONABLE TO ASSUME THAT BOTH HE AND HERRMANN SAW MAZUR LET HIS WIFE OUT OF HIS CAR AT THE PLANT ENTRANCE, AS IT WOULD HAVE BEEN AROUND THE SAME TIME. IN ANY EVENT, HERRMANN IN CROSS-EXAMINATION ADMITTED THAT SOMEONE IDENTIFIED MAZUR WHEN HE WAS LOOKING OUT OF THE WINDOW. WE ACCORDINGLY FIND IN LIGHT OF ALL THE CIRCUMSTANTIAL EVIDENCE THAT BOTH GRIMM AND HERRMANN WERE AWARE OF MAZUR'S IDENTITY AS A UNION ORGANIZER. FURTHER, HAVING PARTICULAR REGARD TO HERRMANN'S EVIDENCE THAT HE "NATURALLY" ASSUMED YOLANDE MAZUR WAS A MEMBER OF THE UNION AND HIS ADMISSION THAT HE HAD DISCUSSIONS WITH GRIMM THAT DAY CONCERNING THE UNION, WE ALSO FIND THAT BOTH MEN WERE AWARE THAT MAZUR'S WIFE WAS EMPLOYED BY THE RESPONDENT.

12. THE EVIDENCE RELATING TO THE DISCHARGE OF MRS. MAZUR'S MOTHER IS ONLY RELEVANT IN THIS PROCEEDING TO THE EXTENT THAT IT ASSISTS THE BOARD IN MAKING A DETERMINATION ON THE ISSUE BEFORE IT, NAMELY, THE DISCHARGE OF MRS. MAZUR. WE DO, IN FACT, FIND THAT EVIDENCE HIGHLY RELEVANT. IN OUR VIEW, HERRMANN'S EXPLANATION FOR THE DISCHARGE OF MRS. MAZUR'S MOTHER IS TOTALLY INCOMPATIBLE WITH THE EVIDENCE. THE ONLY REASONABLE INFERENCE THAT WE ARE ABLE TO DRAW FROM THE EVIDENCE OF HER DISCHARGE IS THAT GRIMM AND HERRMANN, NOTWITHSTANDING THEIR EVIDENCE TO THE CONTRARY, KNEW OF HER RELATIONSHIP TO ALPHONSE MAZUR, AND THAT UPON OBSERVING MAZUR'S OPEN ORGANIZING ACTIVITIES AT THE PLANT GATE THEY MADE AND EXECUTED AN IMMEDIATE DECISION TO DISCHARGE HER. THE FACT OF HER SUBSEQUENT RE-INSTATEMENT BY GRIMM IN NO WAY DETRACTS FROM THAT INFERENCE.

13. WE COME NOW TO THE DISCHARGE OF MRS. MAZUR. FIRST OF ALL WE FIND IT MORE THAN COINCIDENTAL THAT SHE WAS DISCHARGED ON THE DAY THAT HER HUSBAND WAS SOLICITING SUPPORT AMONG THE EMPLOYEES OF THE RESPONDENT AT THE PLANT ENTRANCE. WE ALSO FIND IT MORE THAN COINCIDENTAL THAT HER MOTHER WAS ALSO DISCHARGED ON THE SAME DAY. FURTHER, WE FIND IT MOST

RANGE THAT WHILE THE REST OF THE EMPLOYEES ON THE NIGHT SHIFT CONTINUED TO WORK UP TO AND INCLUDING THE SHIFT ON OCTOBER 14TH, WHEN THE LINE WAS DISCONTINUED, MRS. MAZUR WAS DISCHARGED TWO DAYS BEFORE OSTENSIBLY BECAUSE OF A CUT BACK IN PRODUCTION. THE EXPLANATION OFFERED BY HERRMANN IS PARTICULARLY UNUSUAL IN LIGHT OF THE EVIDENCE THAT SHE WAS INSTRUCTING THE NEWLY EMPLOYED FRENCH-SPEAKING GIRLS AS TO HOW TO DO THE WORK ON THE LINE. IN FACT, HERRMANN HIMSELF COULD NOT EXPLAIN HIS ACTIONS. HE TESTIFIED THAT HE MUST HAVE HAD SOME GOOD REASON FOR DISCHARGING HER TWO DAYS BEFORE THE NIGHT SHIFT LINE CEASED OPERATIONS BUT THAT HE COULD NOT REMEMBER WHAT IT WAS. THE EXPLANATION GIVEN FOR MRS. MAZUR'S DISCHARGE BECOMES EVEN MORE INCREDIBLE WHEN ONE CONSIDERS HERREWEYER'S EVIDENCE THAT SHE WAS A GOOD WORKER AND HIS FURTHER TESTIMONY THAT THE WORK OF THE FRENCH-SPEAKING GIRLS WAS INFERIOR BOTH AS TO QUANTITY AND QUALITY. YET THESE GIRLS CONTINUED THEIR EMPLOYMENT ON THE NIGHT SHIFT UNTIL IT CLOSED DOWN AND WERE SUBSEQUENTLY TRANSFERRED TO THE SAME ASSEMBLY LINE ON THE DAY SHIFT.

14. MRS. MAZUR TESTIFIED THAT WHEN SHE WAS HIRED SHE INFORMED THE RESPONDENT THAT ~~SHE COULD ONLY WORK ON THE NIGHT SHIFT BECAUSE OF BABY-SITTING DIFFICULTIES. HER EVIDENCE IS THAT ABOUT A WEEK PRIOR TO HER~~ DISCHARGE, BECAUSE OF A CHANGE IN CIRCUMSTANCES, SHE WAS AVAILABLE TO WORK ON THE DAY SHIFT, IF NECESSARY, BUT THAT SHE DID NOT INFORM THE RESPONDENT OF THIS CHANGE IN HER SITUATION. WHEN SHE WAS DISCHARGED, HOWEVER, HERRMANN DID NOT INQUIRE WHETHER SHE COULD WORK ON THE DAY SHIFT. HIS EXPLANATION WAS THAT HE HAD BEEN TOLD BY PETER WALKER THAT SHE WAS NOT PREPARED TO WORK THE DAY SHIFT AND THEREFORE HE SAW NO REASON FOR MAKING THE INQUIRY. HERRMANN DID NOT MAKE ANY SUGGESTION OF ALTERNATIVE EMPLOYMENT ON THE NIGHT SHIFT, ALTHOUGH THERE WERE FORTY TO FIFTY EMPLOYEES ON THAT SHIFT. NEITHER DID HE HOLD OUT ANY PROSPECT FOR FUTURE EMPLOYMENT ON THE NIGHT SHIFT ALTHOUGH HE ADMITTED THAT HE HAD SINCE HIRED NEW EMPLOYEES ON THAT SHIFT. HE MERELY ANNOUNCED THAT DUE TO A CUT BACK IN PRODUCTION MRS. MAZUR WAS BEING DISCHARGED, EFFECTIVE IMMEDIATELY. IT IS SIGNIFICANT TO NOTE THAT OTHER EMPLOYEES ON THE NIGHT SHIFT ASSEMBLY LINE, SOME WITH LESS EXPERIENCE THAN MRS. MAZUR, ACCORDING TO THE EVIDENCE OF HERREWEYER, WERE ASKED WHETHER THEY WANTED TO WORK DAYS, AFTER MRS. MAZUR WAS DISCHARGED.

15. HAVING REGARD TO THE Demeanour OF HERRMANN AS A WITNESS, THE LACK OF CANDOUR AS REVEALED BY HIS TESTIMONY AND THE IMPLAUSIBLE NATURE OF THE EXPLANATIONS HE OFFERED FOR SOME OF HIS ACTIONS, WE DID NOT FIND HIM TO BE A CREDIBLE WITNESS. IT NECESSARILY FOLLOWS THAT WE DO NOT ACCEPT HIS STATED REASONS FOR THE DISCHARGE OF MRS. MAZUR. RATHER, IN LIGHT OF ALL THE EVIDENCE, THE BOARD IS SATISFIED THAT MRS. MAZUR WAS DISCHARGED IN THE EARLY MORNING OF OCTOBER 13TH BECAUSE OF HER UNION ACTIVITIES AND THOSE OF HER HUSBAND. WE ACCORDINGLY FIND THAT MRS. MAZUR WAS DEALT WITH BY THE RESPONDENT IN CONTRAVENTION OF SECTION 50 OF THE ACT.

16. OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:

(1) THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY

YOLANDE MAZUR TO THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS SHE HAD, AND RECEIVED, PRIOR TO AND UP TO THE TIME OF HER DISCHARGE ON OCTOBER 13TH, 1966.

- (2) AS COMPENSATION FOR HER LOSS OF WAGES AND EMPLOYMENT BENEFITS FROM OCTOBER 13TH, 1966 TO AND INCLUDING NOVEMBER 18TH, THE RESPONDENT SHALL FORTHWITH PAY TO YOLANDE MAZUR THE SUM OF \$345.00.
- (3) THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW SUSTAINED OR WHICH MAY HEREAFTER BE SUSTAINED BY YOLANDE MAZUR BETWEEN THE DATE OF THE HEARING ON NOVEMBER 18TH, AND THE DATE OF HER ACTUAL RE-EMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF ANY SUCH FURTHER COMPENSATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.

DECISION OF BOARD MEMBER H. F. IRWIN: (NOVEMBER 23, 1966).

I DISSENT.

WHILE I FIND THAT MRS. YOLANDE MAZUR WAS DISCHARGED ON OCTOBER 12TH BY THE RESPONDENT IN CONTRAVENTION OF SECTION 50 OF THE LABOUR RELATIONS ACT BECAUSE OF HER ACTIVITIES ON BEHALF OF THE COMPLAINANT UNION, I CANNOT CONCUR WITH THE DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT AS SET OUT IN PARAGRAPH 16 OF THE MAJORITY DECISION.

THE PRODUCTION LINE ON WHICH MRS. MAZUR WAS WORKING ON THE 4:30 P.M. TO 1:00 A.M. SHIFT WAS DISCONTINUED AS OF 1:00 A.M. ON OCTOBER 15TH. IF ALL THE EMPLOYEES SO ENGAGED HAD BEEN LAID OFF AT THAT TIME AND NOT EMPLOYED ELSEWHERE IN THE PLANT, MRS. MAZUR WOULD BE ENTITLED TO 16 HOURS PAY AT HER REGULAR HOURLY RATE PLUS 5¢ PER HOUR NIGHT SHIFT PREMIUM. THIS WOULD HAVE PLACED HER IN EXACTLY THE SAME POSITION AND WITH THE SAME GROSS EARNINGS AS THOUGH SHE HAD WORKED UNTIL THE NIGHT SHIFT WAS DISCONTINUED ON OCTOBER 15TH.

THE OTHER EMPLOYEES, HOWEVER, WERE GIVEN SIMILAR EMPLOYMENT ON THE DAY SHIFT. TO DIRECT THAT CONTINUING REINBURSEMENT BE GIVEN TO MRS. MAZUR FOR TIME LOST FROM WORK ON AND AFTER OCTOBER 17TH, THE BOARD MUST MAKE A FINDING THAT THE RESPONDENT IS IN CONTRAVENTION OF SECTION 50 OF THE ACT FOR FAILURE TO TRANSFER MRS. MAZUR TO THE DAY SHIFT ALONG WITH THE OTHER EMPLOYEES.

WHAT ARE THE FACTS?

MRS. MAZUR STATED IN EVIDENCE UNDER OATH THAT:

1. WHEN SHE APPLIED FOR WORK TOWARDS THE END OF AUGUST LAST, SHE INFORMED THE RESPONDENT THAT SHE COULD ONLY WORK ON THE NIGHT SHIFT BECAUSE OF BABY-SITTING DIFFICULTIES. THIS FACT WAS NOTED ON HER EMPLOYMENT RECORD CARD AT THE TIME OF HIRING.
2. BECAUSE OF A CHANGE IN CIRCUMSTANCES WHICH TOOK PLACE ONLY A WEEK PRIOR TO HER DISCHARGE, SHE BECAME AVAILABLE TO TO WORK ON THE DAY SHIFT, IF NECESSARY.
3. SHE DID NOT INFORM THE RESPONDENT OF THIS CHANGE IN HER EMPLOYMENT SITUATION.
4. SHE HAD NOT APPLIED TO THE RESPONDENT FOR WORK ON THE DAY SHIFT SINCE HER DISCHARGE ON OCTOBER 12TH.
5. HER MOTHER, WHO WAS ALSO DISCHARGED ON OCTOBER 12TH, APPLIED FOR WORK ON THE DAY SHIFT AND WAS RE-HIRED BY THE RESPONDENT.

IN THE ABOVE CIRCUMSTANCES, MRS. MAZUR'S CASE IS CLEARLY DISTINGUISHABLE FROM THAT OF THE OTHER EMPLOYEES HEREIN CONCERNED. THE RESPONDENT HAD EVERY REASON TO BELIEVE THAT MRS. MAZUR WAS NOT AVAILABLE FOR WORK ON THE DAY SHIFT. IT WAS AT LEAST INCUMBENT UPON HER TO INFORM THE RESPONDENT THAT SHE WAS NOW AVAILABLE FOR AND DESIRED DAY SHIFT WORK. HAVING FAILED TO DISCHARGE THIS RESPONSIBILITY IT CANNOT BE SAID THAT THE RESPONDENT HAS REFUSED TO EMPLOY HER ON THE DAY SHIFT OR THAT SHE HAS BEEN DEALT WITH IN CONTRAVENTION OF SECTION 50 OF THE LABOUR RELATIONS ACT AFTER THE NIGHT SHIFT WAS DISCONTINUED AT 1:00 A.M. ON OCTOBER 15, 1966.

FOR THESE REASONS, I WOULD NOT HAVE DIRECTED THE RESPONDENT TO REIMBURSE MRS. MAZUR FOR ANY TIME LOST FROM WORK AFTER 1:00 A.M. ON OCTOBER 15, 1966.

WE HAVE HAD AN OPPORTUNITY OF READING THE DECISION OF BOARD MEMBER H. H. IRWIN REGARDING THE COMPENSATION TO BE PAID TO YOLANDE MAZUR. IN OUR OPINION, WHAT MRS. MAZUR'S EMPLOYMENT STATUS WITH THE RESPONDENT MIGHT HAVE BEEN HAD SHE NOT BEEN WRONGFULLY DISCHARGED ON OCTOBER 12TH IS PURELY A MATTER OF CONJECTURE WHICH THE BOARD CANNOT TAKE INTO ACCOUNT IN DETERMINING THE COMPENSATION TO BE PAID TO HER.

INDEXED ENDORSEMENT - SECTION 39(3)

12240-66-M: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION 1819, AND EMERY GLASS & ALUMINUM LIMITED; QUEEN CITY GLASS (TORONTO) LIMITED; KENNEDY GLASS LIMITED; PILKINGTON GLASS LIMITED; CANADIAN PITTSBURGH INDUSTRIES, LIMITED; CONSOLIDATED GLASS INDUSTRIES, LIMITED; SERVICE GLASS & MIRROR LIMITED; CANADIAN STRUCTURAL GLASS, LIMITED; JESSUP GLASS & MIRROR; JACK'S GLASS & MIRROR; AACHEN GLASS & MIRROR LIMITED; SCARBOROUGH GLASS & MIRROR LIMITED; GLACO GLASS & MIRROR LIMITED; KNIGHTS GLASS & SERVICES LIMITED; PEEL GLASS & MIRROR LIMITED; ADVANCE GLASS & MIRROR; G. SCHNEIDER & SON; STAR GLAZING COMPANY; C. J. FLICK LIMITED (APPLICANTS).

DECISION OF THE BOARD: (NOVEMBER 1, 1966).

1. THE PARTIES HAVE JOINTLY APPLIED FOR AN EARLY TERMINATION OF THE COLLECTIVE AGREEMENTS BETWEEN THE TRADE UNION AND EACH OF THE EMPLOYERS, APPLICANTS IN THIS MATTER.
2. ON A SEPARATE APPLICATION TO THIS BOARD, BOARD FILE NO. 11733-66-R, THE BOARD DECLARED THAT THE RESPONDENT IN THAT CASE, GLAZIERS AND GLASS-WORKERS LOCAL UNION 1819 OF THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA (THE APPLICANT TRADE UNION IN THE INSTANT CASE), NO LONGER REPRESENTED THE EMPLOYEES OF THE INTERVENOR OF THAT CASE, CANADIAN STRUCTURAL GLASS LIMITED (ONE OF THE APPLICANT EMPLOYERS IN THE INSTANT CASE). BY VIRTUE OF SECTION 43(7) OF THE LABOUR RELATIONS ACT, THE COLLECTIVE AGREEMENT BETWEEN THE TRADE UNION AND CANADIAN STRUCTURAL GLASS, LIMITED CEASED TO OPERATE ON THE MAKING OF THE DECLARATION. THIS APPLICATION, IN SO FAR AS IT AFFECTS CANADIAN STRUCTURAL GLASS, LIMITED, IS ACCORDINGLY DISMISSED.
3. NOTICES OF THE APPLICATION WERE POSTED AS DIRECTED BY THE REGISTRAR, AND NO STATEMENT OF OBJECTIONS HAS BEEN FILED WITH THE BOARD.
4. THE BOARD HEREBY CONSENTS TO THE EARLY TERMINATION BY THE PARTIES OF THE COLLECTIVE AGREEMENTS IN EFFECT BETWEEN THE APPLICANT TRADE UNION AND EACH OF THE APPLICANT EMPLOYERS.

INDEXED ENDORSEMENT - SECTION 66(1)

12436-66-JD: LONDON ACOUSTICS, LTD. (COMPLAINANT) V. WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION, LOCAL 360 (RESPONDENT) V. WESTERN ONTARIO CARPENTERS, MILLWRIGHTS AND MILLMEN DISTRICT COUNCIL AND UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (PERSON FILING A REPLY PURSUANT TO SECTION 34 OF THE BOARD'S RULES OF PROCEDURE).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN AND BOARD MEMBERS R. W. TEAGLE AND P. J. O'KEEFE.

DECISION OF THE BOARD: (November 28, 1966).

1. COMPLAINT ON FORM 37 UNDER SECTION 66(1) OF THE LABOUR RELATIONS ACT. THE HEARING IN THIS MATTER WAS LIMITED TO SUBMISSIONS BY COUNSEL RESPECTING TWO PRELIMINARY OBJECTIONS GOING TO THE BOARD'S JURISDICTION. WE HAVE NOW HAD AN OPPORTUNITY TO CONSIDER THE RECORD IN THIS CASE AND MORE PARTICULARLY THE COMPLAINT ITSELF, IN THE LIGHT OF THE ARGUMENTS OF COUNSEL.
2. THIS IS THE FIRST COMPLAINT FILED WITH THE BOARD UNDER SECTION 66, AS AMENDED BY STATUTES OF ONTARIO, 1966, c. 76. THIS NO DOUBT ACCOUNTS FOR THE LACK OF PARTICULARITY FOUND IN PARAGRAPH 4 OF FORM 37. MORE SPECIFICALLY, THE ACTUAL WORK ALLEGED BY THE COMPLAINANT TO BE IN DISPUTE IS NOT SPELLED OUT. FURTHER, IT IS NOT CLEAR TO THE BOARD JUST WHAT WORK THE RESPONDENT, LOCAL 360, IS ALLEGED TO HAVE REQUIRED THE COMPLAINANT TO ASSIGN. IN OTHER WORDS WE DO NOT KNOW WHETHER THE COMPLAINANT IS RELYING SOLELY ON THE DEMAND BY LOCAL 360 THAT THE COMPLAINANT SIGN THE UNION'S "STANDARD AGREEMENT" OR WHETHER THE COMPLAINANT IS ALLEGING, FURTHER, THAT LOCAL 360 IS REQUIRING THE COMPLAINANT TO ASSIGN SOME PARTICULAR PART OR PARTS OF A "CEILING SYSTEM" TO MEMBERS OF THE SAID UNION. THIS MAY BE CLARIFIED WHEN THE ACTUAL WORK IN DISPUTE IS PARTICULARIZED.
3. BECAUSE THIS IS THE FIRST COMPLAINT ON FORM 37 AND BECAUSE THE PRELIMINARY OBJECTIONS ARE MATTERS OF GRAVE IMPORTANCE, WE ARE NOT PREPARED TO DEAL WITH THEM UNTIL THE MATTERS REFERRED TO ABOVE IN PARAGRAPH 2 HAVE BEEN CLARIFIED. ACCORDINGLY, WE DIRECT THE COMPLAINANT TO FILE WITH THE BOARD FORTHWITH (1) A DETAILED DESCRIPTION OF THE ACTUAL WORK WHICH IS ALLEGED TO BE IN DISPUTE AND (2) CLARIFICATION OF THE WORK ASSIGNMENT WHICH IT IS ALLEGED THAT LOCAL 360 WAS OR IS REQUIRING THE COMPLAINANT TO MAKE.
4. THE BOARD REALIZES THAT, DEPENDING ON THE NATURE OF THE CLARIFICATION OF THE ALLEGED WORK ASSIGNMENT REQUIREMENT, IT MAY BE NECESSARY TO HEAR EVIDENCE WITH RESPECT TO THE EVENTS LEADING UP TO THE FILING OF THIS COMPLAINT. FURTHER, THE PARTIES MAY WISH TO MAKE FURTHER REPRESENTATIONS TO THE BOARD IN THE LIGHT OF THE PARTICULARS WHICH WILL BE FILED. THE REGISTRAR IS ACCORDINGLY DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING. IF THE PARTIES ARE ABLE TO REACH AGREEMENT IN THE ABOVE MATTERS AND DO NOT WISH TO MAKE FURTHER SUBMISSIONS, THE BOARD WILL ENTERTAIN A REQUEST FOR CANCELLATION OF THE HEARING.

INDEXED ENDORSEMENTS - SECTION 79(2)

11002-65-M: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. HAYES STEEL PRODUCTS LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND J. HOGAN FOR THE APPLICANT, AND C. D. GOULD AND J. B. McLAUGHLIN FOR THE RESPONDENT.

DECISION OF THE BOARD: (NOVEMBER 1, 1966).

1. THIS IS AN APPLICATION FOR RELIEF PURSUANT TO SECTION 79(2) OF THE LABOUR RELATIONS ACT. THE APPLICANT SOUGHT THE DECLARATION OF THE BOARD AS TO WHETHER JOHN DUNNE, THOMAS JACKSON AND J. KEMP WERE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. IN AN ENDORSEMENT OF THE RECORD, DATED MAY 13TH, 1966, THE BOARD MADE ITS DECISION WITH RESPECT TO JOHN DUNNE. PURSUANT TO THE DIRECTION SET OUT IN THAT ENDORSEMENT, THE EXAMINER CONTINUED HIS INQUIRY IN THIS MATTER AND ISSUED A REPORT, DATED AUGUST 26TH, 1966, DEALING WITH THE DUTIES AND RESPONSIBILITIES OF THOMAS JACKSON AND J. KEMP.

2. BEFORE SEPTEMBER 13TH, 1966, THOMAS JACKSON AND J. KEMP WERE CLASSIFIED AS SCHEDULERS AND CAME WITHIN THE BARGAINING UNIT. ON THAT DATE THEIR DUTIES WERE CHANGED AND THEY WERE CLASSIFIED AS BUYER-SCHEDULERS, THEIR PRESENT CLASSIFICATION. THE MATERIAL IN THE EXAMINER'S REPORT DEALS WITH THEIR FUNCTIONS AS BUYERS. THESE FUNCTIONS OCCUPY FROM FIVE TO TEN HOURS PER WEEK OF THEIR TIME (AND INCLUDE EXPEDITING AND RELEASING AGAINST BLANKET ORDERS), AND THEY WORK FORTY HOURS PER WEEK. THEIR BUYING FUNCTIONS ARE EXERCISED WITH RESPECT TO A LIMITED NUMBER OF PARTS AND SUPPLIERS, AND DISCRETION IS EXERCISED WITHIN A LIMITED RANGE AND SUBJECT TO DIRECTION IN IMPORTANT CASES.

3. IN OUR VIEW, THE MAJOR PART OF MR. JACKSON'S AND MR. KEMP'S DUTIES REMAIN AS THEY WERE BEFORE THE CHANGES IN THEIR DUTIES WERE PUT INTO EFFECT. THEIR NEW DUTIES AS BUYER-SCHEDULERS DO NOT IMPOSE ON THEM THAT DEGREE OF RESPONSIBILITY AND AUTHORITY WHICH WOULD LEAD US TO CONCLUDE THAT THEY EXERCISE MANAGERIAL FUNCTIONS.

4. THE BOARD DECLARES THAT THOMAS JACKSON AND J. KEMP DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE EMPLOYEES WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

12188-66-M: BOARD OF TRUSTEES OF THE OTTAWA CIVIC HOSPITAL, AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 576 (APPLICANTS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

DECISION OF J. D. O'SHEA, FOR THE MAJORITY, AND DISSENTING DECISIONS OF BOARD MEMBERS E. BOYER AND H. F. IRWIN: (NOVEMBER 28, 1966).

1. THIS IS AN APPLICATION PURSUANT TO THE PROVISIONS OF SECTION 79(2) OF THE LABOUR RELATIONS ACT.

2. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF

SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED NOVEMBER 7TH, 1966, IN THIS MATTER.

3. WHILE IT IS READILY APPARENT THAT THE PERSONS AND CLASSIFICATIONS IN DISPUTE HAVE MORE THAN ONE FUNCTION, THE BOARD HAS ASSESSED THE EVIDENCE IN AN ATTEMPT TO DETERMINE THE MAIN FUNCTION OF THE PERSON OR CLASSIFICATION IN DISPUTE. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE DECISION OF THE BOARD IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, BOARD FILE NO. 10775-65-R, SEPTEMBER 14TH, 1966, THE BOARD DETERMINES THAT SUSAN OTTKOWITZ, PAUL A. FRANCE, MARGARET CHIPPER, M. E. MAY, V. SAUMURE, S. SAWARYN, AND PERSONS CLASSIFIED AS REGISTERED NURSING ASSISTANTS ARE EMPLOYEES OF THE BOARD OF TRUSTEES OF THE OTTAWA CIVIC HOSPITAL FOR THE PURPOSE OF THE LABOUR RELATIONS ACT.

4. THE BOARD FURTHER DETERMINES THAT JOAN BRADDEN, ANNE TIGHE, BETTY BLAKE, I. BIRTCH, B. JOHNSON, SONIA LEMKOW, JOAN CLARKE AND J. PERRET PERSONS CLASSIFIED AS SECRETARIES TO CLINICAL DEPARTMENT CHIEFS, AND J. FORSYTH, I. MOONEY, V. SPERBERG PERSONS CLASSIFIED AS SUPERVISORS, F. W. HAMM THE HEAD CHEF, AND A. CLAIRMONT, GUNTHER J. ULBING, WILLIAM H. MCBRIDE AND JOHN V. JOHNSON PERSONS CLASSIFIED AS ASSISTANT HEAD ORDERLIES, EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE NOT EMPLOYEES OF THE BOARD OF TRUSTEES OF THE OTTAWA CIVIC HOSPITAL FOR THE PURPOSE OF THE ACT.

DECISION OF BOARD MEMBER H. F. IRWIN: (NOVEMBER 28, 1966).

I DISSENT FROM THE MAJORITY DECISION WITH RESPECT TO M. E. MAY WHO I FIND EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY WOULD FIND NOT TO BE AN EMPLOYEE FOR THE PURPOSE OF THE ACT.

DECISION OF BOARD MEMBER E. BOYER: (NOVEMBER 28, 1966).

I DISSENT FROM THE MAJORITY DECISION WITH RESPECT TO J. FORSYTH AND V. SPERBERG WHO I FIND TO BE EMPLOYEES OF THE BOARD OF TRUSTEES OF THE OTTAWA CIVIC HOSPITAL FOR THE PURPOSE OF THE ACT.

INDEXED ENDORSEMENTS - SECTION 79A

10537-65-M: FOOD HANDLERS' LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, C.L.C. (TRADE UNION) AND LEADER'S CLOVER FARMS FOOD MARKET (EMPLOYER).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., FOR THE TRADE UNION, N. L. MATHEWS, Q. C., W. F. B. CHURCH AND H. H. LEADER FOR THE EMPLOYER.

DECISION OF J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFE:
(NOVEMBER 7, 1966).

1. THIS IS A REFERENCE FROM THE MINISTER TO THE BOARD PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT. THE QUESTION FOR DETERMINATION BY THE BOARD IS WHETHER LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC IS ENTITLED TO GIVE NOTICE OF ITS DESIRE TO BARGAIN TO H. HARMAN LEADER CO. LTD. WHICH CARRIES ON BUSINESS UNDER THE NAME OF LEADER'S CLOVER FARMS FOOD MARKET, PURSUANT TO SECTION 47A OF THE LABOUR RELATIONS ACT.

2. THE TRADE UNION IS THE BARGAINING AGENT FOR ALL EMPLOYEES IN THE RETAIL STORES OF STEINBERG'S LIMITED (ONTARIO DIVISION) SAVE AND EXCEPT MEAT DEPARTMENT EMPLOYEES, OFFICE STAFF, STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD. THERE WAS A COLLECTIVE AGREEMENT IN EFFECT BETWEEN STEINBERG'S AND THE TRADE UNION COVERING STEINBERG'S ONTARIO DIVISION EFFECTIVE FROM AUGUST 31ST, 1964 TO MARCH 31ST, 1966. THIS AGREEMENT COVERED THE ABOVE DESCRIBED EMPLOYEES OF STEIBERG'S AT THE SUPERMARKET WHICH IT OWNED AND OPERATED IN THE CITY OF GUELPH.

3. ON JANUARY 25TH, 1965, H. HARMAN LEADER, THE PRESIDENT AND OWNER OF THE LIMITED COMPANY EXECUTED AN AGREEMENT OF PURCHASE AND SALE BY THE TERMS OF WHICH THE COMPANY AGREED TO PURCHASE FROM STEINBERG'S ITS SUPER-MARKET PREMISES AT GUELPH, ALL OF THE EQUIPMENT AND FIXTURES THEREIN, THE REAL PROPERTY UPON WHICH THE PREMISES ARE LOCATED AND THE STOCK-IN-TRADE (ALL OF WHICH ARE DESCRIBED IN ATTACHED SCHEDULES TO THE AGREEMENT). EXCLUDED FROM THE TRANSACTION, HOWEVER, WERE STEINBERG'S PRODUCTS, FROZEN FOOD, MEAT PRODUCE AND DAMAGED STOCK.

4. THE AGREEMENT PROVIDED THAT THE TRANSACTION OF PURCHASE AND SALE WAS TO BE COMPLETED ON OR BEFORE MARCH 1ST, 1965, ON WHICH DATE POSSESSION OF THE PROPERTY AND BUILDING PREMISES WAS TO BE GIVEN TO THE PURCHASER. BY A SERIES OF LETTERS DATED JANUARY 29TH, FEBRUARY 5TH AND FEBRUARY 8TH, 1965, THE AGREEMENT OF PURCHASE AND SALE WAS CONCLUDED BETWEEN LEADER'S AND STEINBERG'S. BY THE FINAL TERMS OF SETTLEMENT SOME OF THE MORTGAGE ARRANGEMENTS AS THEY APPEAR IN THE ORIGINAL AGREEMENT WERE ALTERED AND THE CLOSING DATE OF THE TRANSACTION, AT THE REQUEST OF STEIBERG'S, WAS POST-PPONED UNTIL MARCH 22ND, 1965. ONE OF THE PROVISIONS OF THE FINAL AGREEMENT WAS THAT STEIBERG'S CONTINUE TO OPERATE THE NORMAL BUSINESS OF THE STORE UP TO AND INCLUDING MARCH 20TH, 1965.

5. THE AGREEMENT OF PURCHASE AND SALE CONTAINS NO MENTION OF AN ALLOWANCE FOR GOODWILL IN THE PURCHASE PRICE. ACCORDING TO THE EVIDENCE OF HARMAN LEADER, NONE WAS INTENDED. FURTHER, THE AGREEMENT CONTAINS NO RESTRICTIVE COVENANT PREVENTING STEINBERG'S LIMITED FROM CARRYING ON BUSINESS IN THE SAME MARKET AREA.

UPON THE CLOSING OF THE TRANSACTION, THE EMPLOYER TOOK POSSESSION OF THE STORE PREMISES AND PROCEEDED TO MAKE EXTENSIVE RENOVATIONS. MORE PARTICULARLY, ACCORDING TO THE EVIDENCE OF LEONARD PARLIAMENT, THE PRESENT MANAGER OF THE STORE, THE INTERIOR OF THE STORE, IN PART, WAS REMODELLED AND WAS COMPLETELY REDECORATED; A COFFEE BAR WAS INSTALLED; SOME OF THE OLD EQUIPMENT WAS TRADED IN ON NEW EQUIPMENT AND ADDITIONAL EQUIPMENT AND FIXTURES WERE INSTALLED; A NEW ROOF WAS PUT ON THE SUPERMARKET AND AN OUTDOOR PRODUCE CENTRE WAS CONSTRUCTED.

7. THE SUPERMARKET, UNDER THE NAME OF LEADER'S CLOVER FARMS FOOD MARKET, OPENED FOR BUSINESS ON APRIL 7TH, 1965. WITH THE EXCEPTION OF THE OFFICE GIRL (WHO WAS NOT IN THE BARGAINING UNIT) NONE OF THE EMPLOYEES HIRED BY THE EMPLOYER HAD BEEN IN THE EMPLOY OF STEINBERG'S WHEN IT CLOSED DOWN ITS OPERATIONS IN GUELPH.

8. VICTOR PATHE, A BUSINESS AGENT FOR THE TRADE UNION, TESTIFIED THAT IN APRIL 1965 THE TRADE UNION, BY LETTER, GAVE NOTICE TO THE EMPLOYER OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. ACCORDING TO HIS EVIDENCE NO RESPONSE WAS RECEIVED FROM THE EMPLOYER. HIS EVIDENCE IS THAT SOME TIME LATER THE MANAGER OF THE STORE INFORMED HIM (PATHE) IN PERSON THAT THE EMPLOYER DID NOT INTEND TO NEGOTIATE WITH THE TRADE UNION. AFTER A LAPSE OF SOME CONSIDERABLE LENGTH OF TIME THE TRADE UNION APPLIED TO THE MINISTER FOR CONCILIATION SERVICES.

9. COUNSEL FOR THE TRADE UNION ARGUES THAT THE FACTS OF THE INSTANT CASE, IN ALL ESSENTIAL RESPECTS, ARE THE SAME AS THOSE IN THE DUTCH BOY FOOD MARKETS CASE (BOARD FILE NO. 10220-65-M) WHERE THE BOARD FOUND THAT THE TRANSACTION BETWEEN STEINBERG'S AND KITCHENER FOOD MARKET LIMITED WAS THE SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE ACT. IN THE LATTER CASE STEINBERG'S ASSIGNED THE LEASE TO ITS STORE PREMISES IN KITCHENER AND SOLD TO THE PURCHASER ALL LEASEHOLD IMPROVEMENTS, FIXTURES AND EQUIPMENT, WITH THE EXCEPTION OF FOODSTUFFS AND INVENTORY. IN THE INSTANT CASE STEINBERG'S SOLD ITS REAL PROPERTY, THE BUILDING PREMISES THEREON, FIXTURES AND EQUIPMENT AND MOST OF ITS STOCK-IN-TRADE. IN OTHER WORDS, IN BOTH THE KITCHENER AND GUELPH AREAS STEINBERG'S DISPOSED OF ITS ENTIRE OPERATION. IN THE DUTCH BOY FOOD MARKETS CASE THE OFFER TO PURCHASE SPECIFIED THAT THE PURCHASE PRICE DID NOT INCLUDE AN ALLOWANCE FOR GOODWILL. IN THE PRESENT CASE, THERE IS NO MENTION OF GOODWILL IN THE AGREEMENT OF PURCHASE AND SALE. COUNSEL ARGUES THAT THE ABSENCE OF ANY CONSIDERATION FOR GOODWILL IN THE PURCHASE PRICE CAN THEREFORE ONLY BE IMPLIED. IN NEITHER CASE DO THE WRITTEN TERMS OF THE AGREEMENT BETWEEN THE VENDOR AND PURCHASER CONTAIN A RESTRICTIVE COVENANT PREVENTING OR LIMITING STEINBERG'S FROM CARRYING ON A SUPERMARKET BUSINESS IN THE SAME MARKET AREAS. IN BOTH CASES THE PURCHASER DID NOT HIRE ANY FORMER EMPLOYEES OF STEINBERG'S WHO WERE IN THE BARGAINING UNIT. ALSO, AT BOTH KITCHENER AND GUELPH THE SUPERMARKETS WERE PURCHASED AS GOING CONCERNS. COUNSEL SUBMITS THAT THE FACTS OF THE INSTANT CASE SUPPORT, A FORTIORI, A FINDING SUCH AS THAT WHICH WAS MADE BY THE BOARD IN THE DUTCH BOY FOOD MARKETS CASE. HE ACCORDINGLY ARGUES THAT THE REASONING AND CONCLUSION REACHED BY THE BOARD IN THAT CASE APPLICABLE IN THE PRESENT CASE.

10. COUNSEL FOR THE EMPLOYER SUBMITS THAT THE FACTS OF THE DUTCH BOY FOOD MARKETS CASE AND THE FACTS OF THE INSTANT CASE ARE DISTINGUISHABLE. HE NOTES THAT IN THE FORMER CASE THE BOARD BASED ITS DECISION ON AN AGREED STATEMENT OF FACTS. COUNSEL ARGUES THAT, AS A RESULT, THE BOARD MADE CERTAIN FINDINGS, PARTICULARLY RELATING TO THE NATURE AND TRANSFERABILITY OF GOODWILL IN THE RETAIL FOOD BUSINESS, ON THE BASIS OF ITS GENERAL KNOWLEDGE RATHER THAN ON THE BASIS OF EVIDENCE BEFORE IT. COUNSEL SUBMITS THAT IN THE INSTANT CASE THE EVIDENCE ADDUCED BEFORE THE BOARD DOES NOT SUPPORT A FINDING THAT ANY GOODWILL WAS INHERENT IN THE PREMISES ACQUIRED BY THE EMPLOYER BY REASON OF THE FACT THAT STEINBERG'S FORMERLY CARRIED ON THE SAME TYPE OF BUSINESS IN THAT LOCATION. HE SUGGESTS RATHER THAT THE EVIDENCE SHOWS THAT THERE WAS NO RESIDUAL GOODWILL TO BE ACQUIRED BY REASON OF THAT FACT.

11. COUNSEL FOR THE EMPLOYER ALSO ARGUES THAT AN IMPORTANT CONSIDERATION TAKEN INTO ACCOUNT BY THE BOARD IN ARRIVING AT ITS DECISION THAT THERE WAS A SALE OF A BUSINESS IN THE DUTCH BOY FOOD MARKETS CASE WAS THE FACT THAT THE OFFER TO PURCHASE MADE REFERENCE TO THE WORD "BUSINESS". THE BOARD HE SUBMITS INTERPRETED THIS REFERENCE AS INDICATING THAT IT WAS THE INTENTION OF THE PARTIES THAT THE PURCHASER ACQUIRE BY SALE THE "BUSINESS" OF THE VENDOR. THE WORD "BUSINESS" DOES NOT APPEAR ANYWHERE THROUGHOUT THE AGREEMENT OF PURCHASE AND SALE. COUNSEL ARGUES THAT FROM THE WORDING OF THE AGREEMENT IN THE INSTANT CASE IT IS APPARENT THAT THE PARTIES ONLY CONTEMPLATED THE SALE OF ASSETS IN EXCHANGE FOR CASH.

12. WE DO NOT ACCEPT COUNSEL FOR THE EMPLOYER'S SUGGESTION THAT THE EVIDENCE INDICATES THAT STEINBERG'S SUPERMARKET IN GUELPH HAD A REPUTATION IN THE CONSUMER COMMUNITY WITH WHICH THE EMPLOYER DID NOT WISH TO BE ASSOCIATED. THERE IS, IN FACT, NO EVIDENCE UPON WHICH WE ARE PREPARED TO PLACE ANY RELIANCE AS TO THE FINANCIAL SUCCESS OR GENERAL REPUTATION OF STEINBERG'S IN THAT CASE. THERE IS MERELY THE TESTIMONY OF HARMAN LEADER THAT HE WAS ONLY INTERESTED IN ACQUIRING THE PREMISES OF STEINBERG'S AND THAT THE PURCHASE PRICE DID NOT INCLUDE AN ALLOWANCE FOR GOODWILL. WE ACCORDINGLY REJECT COUNSEL'S SUBMISSION THAT A DISTINCTION CAN BE MADE BETWEEN THE DUTCH BOY FOOD MARKETS CASE AND THE INSTANT CASE ON THE GROUNDS THAT THE CONCLUSIONS THE BOARD SHOULD DRAW FROM THE EVIDENCE IN THE PRESENT CASE ARE DIFFERENT FROM THOSE WHICH IT DREW FROM THE AGREED STATEMENT OF FACTS IN THE EARLIER CASE, WITH REGARD TO THE ACQUISITION OF ANY GOODWILL BY THE PURCHASER.

13. WE AGREE WITH THE SUBMISSION OF COUNSEL FOR THE EMPLOYER THAT THE BOARD IN ARRIVING AT ITS DECISION IN THE DUTCH BOY FOOD MARKETS CASE INTERPRETED THE REFERENCE TO THE "BUSINESS" OF STEINBERG'S IN THE OFFER TO PURCHASE AS INDICATING THAT THE PARTIES THEMSELVES CONTEMPLATED THE SALE OF THE BUSINESS OF THE VENDOR. HAVING REGARD, HOWEVER, TO THE DECISION OF THE BOARD IN THE L & M FOOD MARKET (ONTARIO) LIMITED CASE, O. L. R. B. MONTHLY REPORT, SEPTEMBER 1965, P. 440, WE DO NOT CONSIDER THAT ABOVE DISTINCTION MADE BY COUNSEL IS SUFFICIENT TO DICTATE A DIFFERENT RESULT IN THE INSTANT CASE.

14. THE FACTS OF THE L & M FOOD MARKET LIMITED CASE ARE EVEN CLOSER TO THOSE IN THE INSTANT CASE THAN ARE THE FACTS OF THE DUTCH BOY FOOD MARKETS CASE. IN THE FORMER CASE L & M FOOD MARKET ACQUIRED THE LEASE TO THE STORE PREMISES OF STEINBERG'S AT FERGUS TOGETHER WITH CERTAIN STORE EQUIPMENT, FIXTURES AND MERCHANDISE. THE TRANSACTION DID NOT PROVIDE FOR THE PAYMENT OF ANY ALLOWANCE TO STEINBERG'S FOR ITS GOOD-WILL, NOR DID IT IMPOSE ANY RESTRICTIONS ON STEINBERG'S FROM OPENING AND OPERATING A FOOD MERCHANDISING STORE IN COMPETITION WITH L & M FOOD MARKET IN THE SAME AREA. ONLY ONE FORMER EMPLOYEE OF THE STEINBERG'S STORE WAS HIRED BY L & M FOOD MARKET. SIGNIFICANTLY, FOR THE PURPOSES OF THIS CASE THERE IS NO EVIDENCE OF ANY REFERENCE TO THE SALE OF A "BUSINESS" IN THE TERMS OF THE TRANSACTION. AS IN THE DUTCH BOY FOOD MARKETS CASE, THE BOARD FOUND THAT THE PARTIES INTENDED TO DO AND, FOR ALL PRACTICAL PURPOSES, STEINBERG'S DID SELL TO L & M, IN SO FAR AS THAT COULD BE DONE, THE BUSINESS WHICH HAD BEEN ASSOCIATED WITH THE USE AND OPERATION OF THE ASSETS IN QUESTION. THE BOARD IN THAT CASE ACCORDINGLY FOUND THAT THERE HAD BEEN A DISPOSITION OF THE BUSINESS OF STEINBERG'S AT FERGUS TO L & M WITHIN THE MEANING OF SECTION 47A OF THE ACT.

15. WE WOULD REFER ALSO TO THE RECENT DECISION OF THE BOARD IN THE SUNNYBROOK FOOD MARKET CASE BOARD FILE NO. 12010-66-M. THE NATURE OF THE TRANSACTION IN THAT CASE IS SIMILAR TO THE TRANSACTIONS WITHIN STEINBERG'S AT KITCHENER, FERGUS AND GUELPH, WITH ONE IMPORTANT EXCEPTION. IN THE DUTCH BOY AND L & M CASES THE BOARD FOUND THAT STEINBERG'S HAD SOLD ITS ENTIRE OPERATION IN THE AREA CONCERNED. IN THE SUNNYBROOK FOOD MARKET CASE, HOWEVER, THE BOARD FOUND THAT STEINBERG'S CONTINUED TO DO BUSINESS IN THE SAME GENERAL MARKET AREA AND WAS IN COMPETITION WITH THE PURCHASER. ON THE BASIS OF THIS DISTINCTION, THE BOARD CONCLUDED THAT STEINBERG'S DID NOT GO OUT OF BUSINESS. RATHER, STEINBERG'S CHANGED THE LOCATION OF ITS BUSINESS OPERATIONS WITHIN A PARTICULAR MARKET AREA AND DISPOSED OF CERTAIN UNWANTED PREMISES AND OTHER ASSETS TO A COMPETITOR. ON THIS BASIS, THE BOARD FOUND THAT THERE HAD NOT BEEN THE SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE ACT. IT IS CLEAR FROM THE EVIDENCE IN THE INSTANT CASE THAT STEINBERG'S DISPOSED OF ITS ENTIRE OPERATION IN THE GUELPH AREA. ACCORDINGLY, THE FACTS OF THE INSTANT CASE FALL WITHIN THE PURVIEW OF THE DUTCH BOY AND L & M SITUATIONS RATHER THAN THAT OF SUNNYBROOK FOOD MARKET CASE.

16. THE BOARD ACCORDINGLY FINDS THAT THE TRANSACTION BETWEEN STEINBERG'S AND LEADER'S WAS THE SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE ACT. THE BOARD THEREFORE FURTHER FINDS THAT THE TRADE UNION IS THE BARGAINING AGENT FOR THE EMPLOYEES OF THE EMPLOYER IN THE LIKE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT OF THE EMPLOYEES OF STEINBERG'S DESCRIBED IN PARAGRAPH 2.

17. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER IS THAT THE TRADE UNION IS ENTITLED TO GIVE NOTICE OF ITS DESIRE TO BARGAIN TO THE EMPLOYER, PURSUANT TO SECTION 47A OF THE ACT.

DECISION OF BOARD MEMBER H. F. IRWIN: (NOVEMBER 7, 1966).

I DISSENT.

I DO NOT CONSIDER THAT THIS TRANSACTION CONSTITUTES A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT, AND I WOULD REPORT MY FINDING TO THE MINISTER ACCORDINGLY.

12354-66-M: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (TRADE UNION) V. LAURENTIAN TRANSIT (SUDBURY) LIMITED (EMPLOYER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. W. FORGIE.

APPEARANCES AT THE HEARING: MAURICE W. WRIGHT, Q.C., AND J. WYNTER FOR THE TRADE UNION, AND JOHN RYAN AND GERALD BARBEAU FOR THE EMPLOYER.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN: (NOVEMBER 24, 1966).

1. IT IS CONTENDED BY CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (HEREINAFTER CALLED THE TRADE UNION) THAT A SALE WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT HAS TAKEN PLACE BETWEEN NICKEL BELT COACH LINES LIMITED (HEREINAFTER CALLED NICKEL BELT) AND LAURENTIAN TRANSIT (SUDBURY) LIMITED (HEREINAFTER CALLED LAURENTIAN), AND THAT THE SAID TRADE UNION IS ENTITLED TO GIVE TO THE ALLEGED PURCHASER NOTICE OF DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT AS PROVIDED FOR IN SECTION 47A(2) OF THE ACT.

2. AS PROOF OF THE TRANSACTION UPON WHICH IT BASES ITS CLAIM TO ENTITLEMENT TO GIVE NOTICE TO BARGAIN, THE TRADE UNION FILED THREE DOCUMENTS WITH THE BOARD AT THE HEARING. THE FIRST OF THESE DOCUMENTS, FILED AS EXHIBIT 1, IS AS FOLLOWS:-

AUG. 24TH, 1966.

MR. J. WYNTER,
REPRESENTATIVE,
C.B.R.T. & G.W.
17 DUNDONALD STREET,
TORONTO, ONTARIO.

RE: NICKEL BELT COACH LINES LTD.

DEAR MR. WYNTER:

FURTHER TO YOUR LETTER OF THE 23TH (SIC) INSTANT, I WISH TO ADVISE YOU THAT NICKEL BELT COACH LINES LTD. WAS COMPELLED BY SERIOUS FINANCIAL PROBLEMS TO CURTAIL ITS BUS SERVICE AND TO LAY OFF ALL OF ITS EMPLOYEES ON JULY 4TH 1966.

OUR BUSES ARE LEASED TO LAURENTIAN TRANSIT LTD. AND OUR EMPLOYEES HAVE ALL SECURED EMPLOYMENT IN THE TRANSPORTATION FIELD (SIC) EXCEPT ARTHUR LACOSTE, WHO CHOSE NOT TO ACCEPT A POSITION OFFERED HIM FOR PURELY PERSONAL REASONS.

NICKEL BELT COACH LINES LTD. THEREFORE HAS NO EMPLOYEES, DOES NOT INTEND TO EVER RESUME BUS SERVICE AND IS REMAINING A CORPORATE (SIC) ENTITY ONLY UNTIL ITS ACCOUNTS PAYABLE ARE LIQUIDATED.

I SINCERELY HOPE THAT THIS INFORMATION IS SATISFACTORY (SIC) TO YOU AND THAT CONSEQUENTLY YOU WILL WITHDRAW YOUR REQUEST FOR CONCILIATION SERVICES.

YOURS TRULY,
NICKEL BELT COACH LINES LTD.

G. L. BARBEAU, PRES.

3. THE SECOND DOCUMENT, MARKED AS EXHIBIT 2, IS AS FOLLOWS:

SEPTEMBER 14TH, 1966.

ATTENTION: J. WYNTER, ESQ.

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS,
17 DUNDONALD STREET,
TORONTO 5, ONTARIO.

GENTLEMEN:

YOUR LETTER OF SEPTEMBER 7TH, 1966 ADDRESSED TO MR. E. CARTER HAS BEEN GIVEN THE WRITER FOR REPLY. AS DISCUSSED AS FAR BACK AS THE YEAR 1963, THERE COULD NOT POSSIBLY BE SUCCESSOR STATUS RIGHTS AS INTIMATED IN YOUR LETTER.

AS YOU ARE NO DOUBT AWARE, NICKEL BELT COACH LINES LIMITED WAS FORCED TO CEASE OPERATIONS DUE TO LACK OF FINANCES. THREE EMPLOYEES WHO WERE FORMERLY EMPLOYED WITH THIS COMPANY WERE EMPLOYED BY LAURENTIAN TRANSIT (SUDBURY) LIMITED, ONE WITH QUEEN'S TAXI AND ONE MAN CHOSE TO SEEK HIS OWN FIELD OF ENDEAVOUR WITHOUT ANY ASSISTANCE FROM THE GENERAL MANAGER OF NICKEL BELT COACH LINES LIMITED.

YOURS VERY TRULY,
RYAN & CALDARELLI.

4. THE THIRD DOCUMENT, EXHIBIT 3, IS A CERTIFIED COPY OF A BY-LAW PASSED BY THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE CITY OF SUDBURY TO GRANT TO LAURENTIAN TRANSIT (SUDBURY) LIMITED THE EXCLUSIVE RIGHT TO MAINTAIN AND OPERATE BUSES FOR THE CONVEYANCE OF PASSENGERS IN THE CITY OF SUDBURY. SUBJECT TO APPROVAL OF THE BY-LAW BY THE ONTARIO MUNICIPAL BOARD, THE EXCLUSIVE RIGHT REFERRED TO ABOVE IS GRANTED IN ACCORDANCE WITH CERTAIN TERMS AND CONDITIONS SET OUT IN A DRAFT AGREEMENT ANNEXED TO THE BY-LAW AND, TO USE THE LANGUAGE OF THE BY-LAW "FORMING PART THEREOF". AT THE DATE OF THE HEARING, THE BY-LAW HAD NOT BEEN APPROVED BY THE ONTARIO MUNICIPAL BOARD BUT THE EVIDENCE IS THAT LAURENTIAN TRANSIT IS IN FACT, OPERATING BUSES IN THE CITY OF SUDBURY.
5. THE TRADE UNION WAS CERTIFIED AS BARGAINING AGENT ON BEHALF OF THE EMPLOYEES OF NICKEL BELT COACH LINES LIMITED IN JANUARY OF 1964.
6. THE TRADE UNION CONTENDS THAT THE DOCUMENTARY EVIDENCE FILED ESTABLISHES THAT NICKEL BELT HAS CEASED OPERATING BUSES - THAT IT HAS LEASED TO LAURENTIAN ALL OF ITS BUSES AND THAT THREE OF THE EMPLOYEES OF NICKEL BELT WERE EMPLOYED BY LAURENTIAN AS BUS DRIVERS FOLLOWING THEIR RELEASE BY NICKEL BELT. THE TRADE UNION ARGUES THAT SINCE "SALE" INCLUDES "LEASE" UNDER SECTION 47A(1)(B) OF THE ACT THE LEASE OF THE BUSES CONSTITUTES A SALE WITHIN THE MEANING OF THAT SECTION, AND THAT EVEN IF, AS WAS CONTENDED BY LAURENTIAN, NICKEL BELT IS STILL IN EXISTENCE AND HOLDS OTHER ASSETS, IT HAS NEVERTHELESS SOLD THAT PART OF ITS BUSINESS HAVING TO DO WITH THE OPERATION OF THE BUSES, AND SINCE 47A(1)(A) INDICATES THAT "BUSINESS" INCLUDES A PART OR PART THEREOF, ALL THE ELEMENTS ARE PRESENT ENTITLING IT TO GIVE THE NOTICE IT SEEKS TO DELIVER TO LAURENTIAN.
7. THE EVIDENCE OFFERED BY LAURENTIAN INDICATES THAT NICKEL BELT'S CHARTER HAS NOT BEEN SURRENDERED AND THAT IT HAS ENTERED INTO AN AGREEMENT FOR THE SALE OF ITS PUBLIC VEHICLE OPERATING LICENCE COVERING THE CARRIAGE OF PASSENGERS BETWEEN SUDBURY AND CONNISTON. THIS SALE IS SUBJECT TO THE APPROVAL OF THE ONTARIO HIGHWAY TRANSPORT BOARD. THE LICENCE, IN THE MEANTIME, CONSTITUTES THE COMPANY'S CHIEF ASSET.
8. MORE TO THE POINT HOWEVER, THE EVIDENCE OF G. L. BARBEAU, PRESIDENT OF NICKEL BELT, ESTABLISHED THE FACT THAT THE LEASE OF THE BUSES TO LAURENTIAN IS ON A MONTH TO MONTH BASIS AND INCLUDES ONLY THE BUSES THEMSELVES. FURTHERMORE, HIS EVIDENCE IS THAT PRIOR TO THE DATE WHEN IT CEASED OPERATING BUSES ITSELF, NICKEL BELT LEASED BUSES TO LAURENTIAN FROM TIME TO TIME AS A COMMON BUSINESS PRACTICE. IT WOULD APPEAR THEREFORE THAT THE BUSINESS OF NICKEL BELT, PRIOR TO THE RELEASE OF ALL ITS EMPLOYEES, COMPRISED AT LEAST TWO MATTERS, THE OPERATION OF BUSES FOR TRANSPORTATION AND THE LEASING OF BUSES TO LAURENTIAN. IT CEASED OPERATING BUSES ON ITS OWN BEHALF BUT CONTINUED, AND CONTINUES, TO RENT BUSES TO LAURENTIAN. IN OTHER WORDS, IT IS EVIDENT THAT NICKEL BELT HAS RETAINED RATHER THAN MADE A DISPOSITION OF THAT PART OF ITS NORMAL BUSINESS DEVOTED TO THE RENTAL OF BUSES. THERE IS NO EVIDENCE INDICATING THAT NICKEL BELT'S MONTH TO MONTH RENTAL INVOLVES IN ANY WAY EMPLOYMENT OF ITS

FORMER DRIVERS BY LAURENTIAN. IN FACT AN OPPOSITE CONCLUSION IS INFERRABLE FROM A READING OF THE CORRESPONDENCE FILED, SO THAT NOTHING TURNS UPON THE FACT THAT THESE PERSONS WERE ABLE TO FIND EMPLOYMENT WITH LAURENTIAN.

9. ON THE EVIDENCE BEFORE US WE FIND THAT THE TRADE UNION HAS NOT ESTABLISHED THAT A SALE OF BUSINESS OR PART OF A BUSINESS HAS TAKEN PLACE BETWEEN NICKEL BELT AND LAURENTIAN WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT. NO EVIDENCE WAS PRODUCED NOR WAS ANY ARGUMENT ADVANCED BY THE TRADE UNION WHICH WOULD ESTABLISH ANY RIGHT IN IT TO GIVE NOTICE TO BARGAIN PURSUANT TO ANY OTHER PROVISION OF THE LABOUR RELATIONS ACT.

10. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER IS THAT THE TRADE UNION IS NOT ENTITLED TO GIVE NOTICE OF DESIRE TO BARGAIN TO THE EMPLOYER PURSUANT TO SECTION 47A OF THE ACT, OR PURSUANT TO ANY OTHER PROVISIONS OF THE LABOUR RELATIONS ACT.

DECISION OF BOARD MEMBER D. W. FORGIE: (NOVEMBER 24, 1966).

I DISSENT.

SECTION 47A (1) OF THE ACT STATES:-

(A) "BUSINESS" INCLUDES A PART OR PARTS THEREOF;

(B) "SELLS" INCLUDES LEASES, TRANSFERS AND ANY OTHER MANNER OF DISPOSITION,.....

THE EVIDENCE IS QUITE CLEAR THAT "LEASING" DID TAKE PLACE, AND ACCORDINGLY I FIND THAT A SALE OF "BUSINESS" WITHIN THE MEANING OF THIS SECTION DID IN FACT OCCUR, AND THE TRADE UNION IS ENTITLED TO GIVE NOTICE OF DESIRE TO BARGAIN TO THE EMPLOYER PURSUANT TO SECTION 47A OF THE ACT.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION

12002-66-R: FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL.CIO.CLC. (APPLICANT) v. ROMI FOODS LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS D. ALAN PAGE AND P. J. O'KEEFFE.

DECISION OF THE BOARD: (NOVEMBER 15, 1966).

1. BY LETTER DATED OCTOBER 28TH, 1966, THE RESPONDENT AFTER MAKING SPECIFIC REFERENCE TO STATEMENTS CONTAINED IN THE REPORT OF THE EXAMINER HEREIN, HAVING TO DO WITH AN EMPLOYEE MARCELLO ANDREIS, REQUESTS THE BOARD TO DO THE FOLLOWING:

- (A) SCHEDULE A HEARING FOR ARGUMENT ON THE STATUS OF
EMPLOYEE MARCELLO ANDREIS; OR
- (B) AMEND ITS CERTIFICATE TO EXEMPT FOREMEN;
- (C) DECLARE MARCELLO ANDREIS TO BE A FOREMAN.

2. PRIOR TO THE ISSUE OF THE BOARD'S DECISION HEREIN, THE RESPONDENT WAS SERVED WITH A COPY OF THE REPORT OF THE EXAMINER APPOINTED BY THE BOARD, DATED SEPTEMBER 19TH, 1966. THE REPORT DEALT WITH, AMONG OTHER THINGS, THE DUTIES AND RESPONSIBILITIES OF MARCELLO ANDREIS. ATTACHED TO THE EXAMINER'S REPORT WAS THE USUAL NOTICE OF REPORT OF EXAMINER. THE NOTICE CONTAINED THE CUSTOMARY ADMONITION THAT UNLESS A STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS WAS MADE NOT LATER THAN, IN THE PRESENT CASE, THE 27TH OF SEPTEMBER 1966, "THE REPORT SHALL CONSTITUTE EVIDENCE ON THE MATTERS CONTAINED THEREIN AND THE BOARD MAY DISPOSE OF THE APPLICATION UPON THE MATERIAL BEFORE IT WITHOUT FURTHER NOTICE TO THE PARTIES". THE RESPONDENT DID NOT FILE A STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS WITHIN THE TIME LIMITED BY THE NOTICE. THE BOARD PROCEEDED TO DISPOSE OF THE MATTER UPON THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT.

3. FURTHERMORE, ALL THE EVIDENCE IN THE EXAMINER'S REPORT TO WHICH THE RESPONDENT MAKES REFERENCE WERE CONSIDERED BY THE BOARD IN ITS REVIEW OF THE REPORT PRIOR TO REACHING A DECISION IN THE MATTER. IN ADDITION, THE LETTER FAILS TO RAISE ANY NEW MATTER BY WAY OF EVIDENCE OR ARGUMENT WHICH COULD NOT HAVE BEEN RAISED AT THE APPROPRIATE TIME.

4. FOR ALL THE ABOVE REASONS THE REQUEST OF THE RESPONDENT IS DENIED.

12032-66-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) V.
STYLE-RITE BLOUSE COMPANY LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

DECISION OF THE BOARD: (NOVEMBER 17, 1966).

1. THE RESPONDENT, BY LETTER DATED OCTOBER 12TH, 1966, HAS REQUESTED THE BOARD TO RECONSIDER AND VARY ITS DECISION, DATED SEPTEMBER 28TH, 1966, IN WHICH IT DISMISSED THE APPLICATION HEREIN UPON THE WRITTEN REQUEST OF THE APPLICATION FOR LEAVE TO WITHDRAW, DATED SEPTEMBER 26TH, 1966. THE RESPONDENT SUBMITS THAT, IN THE CIRCUMSTANCES HEREIN, THE BOARD SHOULD AMEND ITS DECISION SO AS TO PROVIDE THAT IN THE EVENT A FURTHER APPLICATION IS MADE BY THE APPLICANT UNION WITH RESPECT TO THE RESPONDENT WITHIN SIX MONTHS FROM SEPTEMBER 28TH, 1966, THE APPLICANT SHOULD BE REQUIRED TO SHOW CAUSE WHY THE BOARD SHOULD ENTERTAIN THE NEW APPLICATION.

2. THE CIRCUMSTANCES ARE THAT THIS WAS AN APPLICATION FOR CERTIFICATION IN WHICH THE BOARD APPOINTED AN EXAMINER FOLLOWING THE APPLICANT'S CHALLENGE OF THE LISTS SUPPLIED BY THE EMPLOYER. AN INTERIM REPORT WAS ISSUED AND A SECOND MEETING WITH THE EXAMINER WAS ARRANGED BY THE EXAMINER AND THE PARTIES. PRIOR TO THE DATE SET FOR THIS MEETING, THE APPLICANT, BY LETTER DATED SEPTEMBER 26TH, 1966, SOUGHT LEAVE TO WITHDRAW THE APPLICATION. THE BOARD, FOLLOWING ITS USUAL PROCEDURE, DISMISSED THE APPLICATION.

3. IN THIS INSTANCE, FOR THE REASON SET OUT BELOW, A COPY OF THE APPLICANT'S REQUEST TO WITHDRAW WAS NOT FORWARDED TO THE RESPONDENT PRIOR TO THE ISSUANCE OF THE BOARD'S DECISION OF SEPTEMBER 28TH, 1966. THE RESPONDENT TAKES THE POSITION THAT IF SUCH COPY HAD BEEN RECEIVED BY IT, IT WOULD HAVE MADE, PRIOR TO THE BOARD'S DECISION, THE SUBMISSIONS AND REPRESENTATIONS IT NOW MAKES IN THE HOPE OF, AT THAT TIME, PERSUADING THE BOARD TO ISSUE A DECISION EMBODYING THE BAR IT NOW ASKS THE BOARD TO INSERT BY WAY OF RECONSIDERATION AND REVIEW.

4. IT SHOULD BE EXPLAINED THAT THE SECOND MEETING WITH THE EXAMINER, REFERRED TO IN PARAGRAPH 2 HEREOF, WAS CANCELLED AS THE RESULT OF THE APPLICANT'S REQUEST TO WITHDRAW. IT WAS THE UNDERSTANDING OF THE BOARD THAT COUNSEL FOR THE RESPONDENT ON BEING ADVISED OF THE CANCELLATION OF THE MEETING, WHICH HAD BEEN SET FOR SEPTEMBER 29TH, 1966, WAS ALSO ADVISED OF THE REASON FOR THE CANCELLATION. IN SUCH CIRCUMSTANCES, AND BECAUSE OF THE NATURE OF THE MATTER INVOLVED, IT APPEARED UNPREJUDICIAL TO THE RESPONDENT AND SUPERFLUOUS TO SEND FORWARD A COPY OF THE LETTER.

5. THE BOARD HAS GIVEN CAREFUL CONSIDERATION TO THE SUBMISSIONS CONTAINED IN THE RESPONDENT'S LETTER OF OCTOBER 12TH, 1966, AND TO THOSE CONTAINED IN THE LETTER OF THE APPLICANT, DATED OCTOBER 19TH, 1966, A COPY OF WHICH WAS FORWARDED TO THE RESPONDENT BY THE BOARD ON OCTOBER 20TH, 1966. THE FACTS UPON WHICH THE RESPONDENT BASIS ITS SUBMISSIONS ARE THOSE THAT WERE CONSIDERED BY THE BOARD PRIOR TO THE ISSUANCE OF ITS DECISION AND NO NEW FACTS ARE SUGGESTED BY THE RESPONDENT. IT IS THE GENERAL POLICY OF THE BOARD NOT TO IMPOSE A BAR TO A NEW APPLICATION WHERE THERE HAS BEEN A DISMISSAL OF AN APPLICATION FOR CERTIFICATION FOLLOWING A REQUEST TO WITHDRAW AND NO REPRESENTATION VOTE IS INVOLVED. THERE IS NOTHING IN THE INSTANT CASE TO CAUSE THE BOARD TO ALTER ITS PRACTICE, AND THE REQUEST OF THE APPLICANT IS ACCORDINGLY DENIED. THIS IS NOT TO SAY THAT THE RESPONDENT IS NOT FREE TO RAISE THE ISSUE IN THE EVENT A NEW APPLICATION IS MADE.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

12365-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) v. C. A. PITTS GENERAL CONTRACTOR LIMITED (RESPONDENT).

6. THE GEOGRAPHIC AREA PROPOSED BY BOTH THE APPLICANT AND THE RESPONDENT IS THE COUNTY OF LEEDS. THERE IS NO GENERAL PATTERN OF BARGAINING AMONG TRADE UNIONS AND EMPLOYERS FROM WHICH IT COULD BE

INFERRED THAT THE COUNTY OF LEEDS IS AN APPROPRIATE GEOGRAPHIC AREA. IN THESE CIRCUMSTANCES, AS A PURELY INTERIM MEASURE, THE BOARD THEREFORE FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIPS OF ELIZABETHTOWN, FRONT OF YONGE, FRONT OF ESCOTT, FRONT OF LEEDS AND LANSDOWNE, ALL IN THE COUNTY OF LEEDS, ENGAGED IN THE OPERATIONS OF CRANES, SHOVELS BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

12394-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (APPLICANT) v. ARMELLOY CONCRETE FLOORS LIMITED (RESPONDENT).

THE ABOVE FINDING HAS BEEN MADE WITHOUT TAKING INTO CONSIDERATION THE FOUR STATEMENTS OF MEMBERSHIP FILED BY THE APPLICANT. THESE STATEMENTS WERE NOT CERTIFIED TO BE CORRECT BY A RESPONSIBLE OFFICER OF THE APPLICANT TRADE UNION AND DID NOT, THEREFORE, MEET THE BOARD'S STANDARDS RESPECTING THIS TYPE OF MEMBERSHIP EVIDENCE.

12398-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) v. PENTAGON CONSTRUCTION COMPANY LIMITED (RESPONDENT).

3. THE RESPONDENT HAS REQUESTED A HEARING ON THE FOLLOWING GROUNDS:

"1. THE RECENT LABOUR STRIFE IN THE TIMMINS AREA HAS ILLUSTRATED, WE BELIEVE, THAT UNION HEADS ARE NOT ABLE TO COMMAND ANY RESPECT ON THE PART OF THEIR RANK AND FILE TO ABIDE BY ANY AGREEMENTS OR CONTRACTS THAT THEY AND THE EMPLOYERS HAVE SIGNED. THE MANY WORK STOPPAGES AT TEXAS GULF BEARS THIS OUT.

2. ALL PRESENT EMPLOYEES SOUGHT EMPLOYMENT AT THE SITE WITHOUT ASSISTANCE FROM THE UNION OFFICE AND HAVE AND ARE ACCEPTING THE TERMS OF EMPLOYMENT OFFERED BY PENTAGON CONSTRUCTION CO. LTD. THESE TERMS OF EMPLOYMENT HAVE AND WILL BE AMENDED FROM TIME TO TIME TO THE MUTUAL SATISFACTION OF ALL PARTIES.

3. THE PRESENT CONTRACT CANNOT BE CONSIDERED OF THE SAME MAGNITUDE AS OTHER UNIONIZED CONTRACTS IN TIMMINS AREA. WE ARE OF THE OPINION THAT THE MINOR SIZE OF BARGAINING UNIT WILL PERMIT LABOUR RELATIONS BETWEEN THE EMPLOYEES AND EMPLOYER OF A NATURE SATISFACTORY TO BOTH PARTIES."

WITH RESPECT TO GROUND NUMBER ONE IT IS CLEAR THAT EVEN IF THE STATEMENTS CONTAINED THEREIN COULD BE SHOWN TO BE TRUE, THESE ARE NOT MATTERS WHICH THE BOARD IS ENTITLED TO CONSIDER IF A TRADE UNION IS OTHERWISE ENTITLED TO BE CERTIFIED UNDER THE LABOUR RELATIONS ACT.

STATISTICAL TABLES FOR NOVEMBER 1966

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	NOVEMBER 1966	1ST 8 MONTHS OF 1966-67	FISCAL YEAR 1965-66
I. CERTIFICATION	63	655	668
II. DECLARATION TERMINATING BARGAINING RIGHTS	3	25	45
III. DECLARATION OF SUCCESSOR STATUS	3	9	6
IV. DECLARATION THAT STRIKE UNLAWFUL	5	19	38
V. DECLARATION THAT LOCK-OUT UNLAWFUL	1	1	3
VI. CONSENT TO PROSECUTE	5	59	73
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	5	75	77
VIII. MISCELLANEOUS	5	43	38
TOTAL	<u>90</u>	<u>886</u>	<u>948</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	NOVEMBER 1966	1ST 8 MONTHS OF 1966-67	FISCAL YEAR 1965-66
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	97	630	824

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR
RELATIONS BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	NOVEMBER 1966	1ST 8 MONTHS OF 1966-67	FISCAL YEAR 1965-66
I. CERTIFICATION	95	685	673
II. DECLARATION TERMINATING BARGAINING RIGHTS	4	25	44
III. DECLARATION OF SUCCESSOR STATUS	3	8	9
IV. DECLARATION THAT STRIKE UNLAWFUL	4	17	33
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	-	1
VI. CONSENT TO PROSECUTE	8	53	42
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	11	82	78
VIII. MISCELLANEOUS	10	45	52
TOTAL	<u>135</u>	<u>915</u>	<u>932</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>NOVEMBER 1ST 8 MTHS FISCAL YR.</u>			<u>NOVEMBER 1ST 8 MTHS FISCAL YR.</u>		
	<u>1966</u>	<u>1966-67</u>	<u>1965-66</u>	<u>1966</u>	<u>1966-67</u>	<u>1965-66</u>
<u>I. CERTIFICATION</u>						
GRANTED	72	504	502	3235	14310	13204
DISMISSED	21	124	115	984	10038	8244
WITHDRAWN	<u>2</u>	<u>57</u>	<u>56</u>	<u>17</u>	<u>815</u>	<u>3135</u>
TOTAL	<u>95</u>	<u>685</u>	<u>673</u>	<u>4236</u>	<u>25163</u>	<u>24583</u>
<u>II. TERMINATION</u>						
<u>OF BARGAINING</u>						
<u>RIGHTS</u>						
GRANTED	-	14	18	-	462	1201
DISMISSED	4	11	23	92	279	730
WITHDRAWN	<u>-</u>	<u>-</u>	<u>3</u>	<u>-</u>	<u>-</u>	<u>119</u>
TOTAL	<u>4</u>	<u>25</u>	<u>44</u>	<u>92</u>	<u>741</u>	<u>2050</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>NOVEMBER 1ST 8 MONTHS OF FISCAL YEAR</u>		
		<u>1966</u>	<u>1966-67</u>	<u>1965-66</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	2	6
	DISMISSED	-	-	3
	WITHDRAWN	4	15	24
		<u>4</u>	<u>17</u>	<u>33</u>
	TOTAL	<u>4</u>	<u>17</u>	<u>33</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	1
	WITHDRAWN	-	-	-
		<u>-</u>	<u>-</u>	<u>-</u>
	TOTAL	<u>-</u>	<u>-</u>	<u>1</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	-	7	8
	DISMISSED	5	9	5
	WITHDRAWN	3	37	29
		<u>8</u>	<u>53</u>	<u>42</u>
	TOTAL	<u>8</u>	<u>53</u>	<u>42</u>

TABLE V
REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED
OF BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>NOVEMBER 1966</u>	<u>1ST 8 MONTHS OF 1966-67</u>	<u>FISCAL YEAR 1965-66</u>
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	3	13	15
POST-HEARING VOTE	5	28	22
BALLOTS NOT COUNTED	-	-	-
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	3	8	6
POST-HEARING VOTE	4	45	23
BALLOTS NOT COUNTED	-	-	2
TOTAL	<u>15</u>	<u>94</u>	<u>68</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI
REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>NOVEMBER 1966</u>	<u>1ST 8 MONTHS OF 1966-67</u>	<u>FISCAL YEAR 1965-66</u>
*RESPONDENT UNION SUCCESSFUL	-	4	1
RESPONDENT UNION UNSUCCESSFUL	-	11	16
TOTAL	<u>-</u>	<u>15</u>	<u>17</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING DECEMBER 1966

BARGAINING AGENTS CERTIFIED DURING DECEMBER

No Vote Conducted

11899-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. FULLER AND VENTON LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF COOKSVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SERVICE STATION AND SHOP EMPLOYEES, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (63 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE CIRCUMSTANCES OF THE INSTANT CASE).

12108-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. NO-SAG SPRING COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT OFFICE MANAGER AND PERSONS ABOVE THE RANK OF OFFICE MANAGER." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 667).

12158-66-R: RETAIL STORE EMPLOYEES UNION, LOCAL NO. 832 (APPLICANT) v. STYLERITE DEPARTMENT STORES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DRYDEN REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT STORE MANAGER AND PERSONS ABOVE THE RANK OF STORE MANAGER." (12 EMPLOYEES IN THE UNIT).

12208-66-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 804, (AFL-CIO-CLC) (APPLICANT) v. MUIRHEAD INSTRUMENTS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STRATFORD, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE, PURCHASING AND SALES STAFF, NURSES, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (117 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 670).

12369-66-R: UNITED GARMENT WORKERS OF AMERICA LOCAL #253 (APPLICANT) v. WEATHERCRAFT SPORTSWEAR LTD. CARRYING ON BUSINESS UNDER THE NAME, STYLE OR FIRM OF CANADA SPORTSWEAR Co. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, AND OFFICE AND SALES STAFF." (38 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 683).

12379-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE SAULT STE. MARIE BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PROFESSIONAL TEACHING STAFF AND PERSONS COVERED BY THE TERMS OF A SUBSISTING COLLECTIVE AGREEMENT." (22 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12414-66-R: UNITED PACKINGHOUSE FOOD & ALLIED WORKERS, AFL-CIO-CLC (APPLICANT) v. THE ONTARIO MILK MARKETING BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS CHEESE DIVISION AT BELLEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

12429-66-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 280, A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. FORBES TAVERN (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL TAPMEN, BARTENDERS, BEVERAGE-WAITERS, BAR-BOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT IN ITS OPERATION IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (5 EMPLOYEES IN THE UNIT).

12438-66-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. ST. JOSEPH HOSPITAL (RESPONDENT).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHIEF ENGINEER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS (310 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

12443-66-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 141 (APPLICANT) V. M. LOEB LIMITED WHOLESALE SELF SERVICE CASH & CARRY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS CASH AND CARRY OPERATION AT LONDON, SAVE AND EXCEPT ASSISTANT MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

12445-66-R: CANADIAN TRANSPORTATION WORKERS' UNION, No. 199, NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT) V. LAIDLAW TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (19 EMPLOYEES IN THE UNIT).

12446-66-R: POCKETBOOK WORKERS UNION, LOCAL 9 OF THE INTERNATIONAL LEATHER GOODS, PLASTICS & NOVELTY WORKERS UNION (APPLICANT) V. STANDFORD & KENNEDY WHOLESALE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

12447-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. KELSON SPRING PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (128 EMPLOYEES IN THE UNIT).

12451-66-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED PLANT GUARDS, LOCAL 1958 (APPLICANT) V. HIRAM WALKER & SONS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL PLANT GUARDS IN THE EMPLOY OF THE RESPONDENT AT WINDSOR, WALKERVILLE AND THE TOWNSHIP OF MAIDSTONE, SAVE AND EXCEPT SERGEANTS AND PERSONS ABOVE THE RANK OF SERGEANT." (37 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE TERM SERGEANT INCLUDES ACTING SERGEANT.

12462-66-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT KITCHENER, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (7 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12464-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. PEACOCK CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

12466-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. STOIC CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (5 EMPLOYEES IN THE UNIT).

12471-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. ACTO BUILDERS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

12472-66-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, B. S. E. I. U. (APPLICANT) V. NORVIEW HOME FOR THE AGED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SIMCOE, SAVE AND EXCEPT SUPERVISOR PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED NURSES, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (36 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12474-66-R: LOCAL UNION 556 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL - CIO - CLC (APPLICANT) V. THE BOARD OF WATER COMMISSIONERS OF THE CITY OF WELLAND (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (25 EMPLOYEES IN THE UNIT).

12476-66-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 532 (APPLICANT) V. WEST HALDIMAND GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAGERSVILLE, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHIEF ENGINEER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (36 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

THE BOARD FURTHER DECLARED THAT CERTIFIED NURSING ASSISTANTS ARE INCLUDED IN THE BARGAINING UNIT.

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT WARD CLERKS ARE OFFICE STAFF AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

12477-66-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, LOCAL 756, AFL-CIO-CLC (APPLICANT) V. DOMINION SPORTSERVICE LIMITED (RESPONDENT).

UNIT #1: "ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, BARBOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT AT MOHAWK RACEWAY AT CAMPBELLVILLE, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (15 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, BARBOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT AT MOHAWK RACEWAY AT CAMPBELLVILLE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT ASSISTANT MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT MANAGER." (7 EMPLOYEES IN THE UNIT).

12479-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TOWNSHIP OF YORK COMMUNITY CENTRES BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (26 EMPLOYEES IN THE UNIT).

12488-66-R: AMALGAMATED CLOTHING WORKERS OF AMERICA CLC AFL-CIO (APPLICANT) V. ORILLIA CLOTHING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ORILLIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (13 EMPLOYEES IN THE UNIT).

12489-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 493 (APPLICANT) V. PENTAGON CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS FROM THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

12493-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NATIONAL MACHINE PRODUCTS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENT EMPLOYED DURING SCHOOL VACATION PERIOD." (39 EMPLOYEES IN THE UNIT).

12494-66-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. JOHN VANDERVIES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

12497-66-R: TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION No. 10 (APPLICANT) V. THE DONIN COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL LETTER PRESSMEN AND OFFSET PRESSMEN AND THEIR ASSISTANTS AND APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (13 EMPLOYEES IN THE UNIT).

12498-66-R: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (APPLICANT) V. TORONTO YOUNG MEN'S CHRISTIAN ASSOCIATION CENTRAL BRANCH (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT IN ITS CENTRAL BRANCH IN METROPOLITAN TORONTO." (4 EMPLOYEES IN THE UNIT).

IT IS THE NORMAL PRACTICE OF THE BOARD TO INCLUDE CASUAL, TEMPORARY AND PROBATIONARY EMPLOYEES IN A BARGAINING UNIT. IN THESE CIRCUMSTANCES, THEREFORE, THE BOARD FOUND THE ABOVE UNIT TO BE APPROPRIATE.

12499-66-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF PETERBOROUGH (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS JAIL IN PETERBOROUGH, SAVE AND EXCEPT CHIEF TURNKEY, PERSONS ABOVE THE RANK OF CHIEF TURNKEY AND OFFICE STAFF." (13 EMPLOYEES IN THE UNIT).

IN ITS REPLY, THE RESPONDENT PROPOSED THE EXCLUSION OF CASUAL EMPLOYEES. IT IS NOT THE USUAL PRACTICE OF THE BOARD TO EXCLUDE SUCH EMPLOYEES AND WE SEE NO REASON FOR DEPARTING FROM THIS PRACTICE IN THIS CASE. AT THE HEARING, THE RESPONDENT REQUESTED THE BOARD TO EXCLUDE PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK. WE ARE NOT SATISFIED ON THE MATERIALS BEFORE US THAT THE RESPONDENT DOES, IN FACT, EMPLOY "TWENTY-FOUR HOUR" PERSONNEL. IN THESE CIRCUMSTANCES, THEREFORE, THE BOARD FURTHER FOUND THE ABOVE UNIT TO BE APPROPRIATE.

12501-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. SUNSHINE UNIFORM SUPPLY Co. LTD. (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT OFFICE SUPERVISOR, PERSONS ABOVE THE RANK OF OFFICE SUPERVISOR, SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

12502-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. SUNSHINE UNIFORM SUPPLY Co. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, DRIVER SALESMEN, OFFICE STAFF, SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (37 EMPLOYEES IN THE UNIT).

12509-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DRAKE CONSTRUCTION Co. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY AND IN THE TOWNSHIP OF EDWARDSBURGH, IN THE COUNTY OF GRENVILLE, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (23 EMPLOYEES IN THE UNIT).

12513-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. BOYLE-MIDWAY (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (38 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 697).

12525-66-R: MILK & BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. MONARCH FINE FOODS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, RESEARCH AND DEVELOPMENT LABORATORY STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (33 EMPLOYEES IN THE UNIT).

12528-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BROCK DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT THE SECRETARY-TREASURER AND PERSONS ABOVE THE RANK OF SECRETARY-TREASURER." (3 EMPLOYEES IN THE UNIT).

12529-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. W. A. McDougall Ltd. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF MANITOULIN EXCEPT THAT PORTION OF THE DISTRICT OF MANITOULIN WITHIN A THIRTY-FIVE MILE RADIUS OF THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12534-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CLARKSON CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS, AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

12536-66-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT 125 TYCOS DRIVE IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

12546-66-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. MELDON CONSTRUCTION (NORTH BAY) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF CHAMBERS, STRATHY, BRIGGS AND STRATHCONA IN THE DISTRICT OF NIPPISSING SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

12421-66-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. ESTATES - GENERAL INVESTMENTS LTD. (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT THE SHELL BUILDING, 505 UNIVERSITY AVENUE, TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS		5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0	

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

11586-65-R: LOCAL 280 OF THE HOTEL AND RESTAURANT EMPLOYEE'S AND BARTENDER'S INTERNATIONAL UNION. A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. DOMINION SPORTSERVICE LIMITED (RESPONDENT).

UNIT: "ALL FULL TIME AND PART TIME TAPMEN, BARTENDERS, BEVERAGE WAITERS, BAR BOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT AT GREENWOOD RACEWAY IN THE CITY OF TORONTO, SAVE AND EXCEPT BAR SUPERVISOR AND PERSONS ABOVE THE RANK OF BAR SUPERVISOR." (36 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		45
NUMBER OF PERSONS WHO CAST BALLOTS		49
BALLOTS SEGREGATED AND NOT COUNTED	6	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	40	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING DECEMBER

NO VOTE CONDUCTED

12413-66-R: UNITED EMPLOYEES OF BORG FABRICS LIMITED (APPLICANT) v. BORG FABRICS LIMITED (RESPONDENT). (92 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 693).

12418-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. THE DUMONT ALUMINUM LIMITED (RESPONDENT) (10 EMPLOYEES).

12463-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. LIMESTONE QUARRIES LIMITED (RESPONDENT). (NO EMPLOYEES).

12482-66-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. YORK FARMS, DIVISION OF CANADA PACKERS LIMITED (RESPONDENT) V. UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS AFL-CIO-CLO ON BEHALF OF LOCAL 469 (INTERVENER). (19 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 695).

12535-66-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT 100 WINGOLD AVENUE IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN OFFICE AND SALES STAFF." (51 EMPLOYEES IN THE UNIT).

THE BOARD HAS CONSIDERED THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES RELATING TO ENGINEERING OR SHOP TECHNICIANS AND FINDS THAT THEY ARE APPROPRIATE FOR INCLUSION AND ARE INCLUDED IN THE BARGAINING UNIT.

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT FIELD SERVICE TECHNICIANS ARE NOT INCLUDED IN THE BARGAINING UNIT.

CERTIFICATIONS DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

12334-66-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION (APPLICANT) V. MEASUREMENT ENGINEERING LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ARNPRIOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (24 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	28
NUMBER OF PERSONS WHO CAST BALLOTS	28
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	14
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	14

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

12041-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BAYCOAT LIMITED (RESPONDENT) V. AN EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (25 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	25
NUMBER OF PERSONS WHO CAST BALLOTS	25
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	22

12095-66-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. FLERON LUMBER COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE GARDEN RIVER INDIAN RESERVE IN THE DISTRICT OF ALGOMA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, LUMBER GRADERS, DRY KILN OPERATOR, ASSISTANT DRY KILN OPERATOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (28 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	19
NUMBER OF PERSONS WHO CAST BALLOTS	19
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11

12351-66-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. CERTIFIED AUTOMOTIVE PRODUCTS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	15
NUMBER OF PERSONS WHO CAST BALLOTS	8
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING DECEMBER

12442-66-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 141 (APPLICANT) V. M. LOEB (LONDON) LIMITED (RESPONDENT). (5 EMPLOYEES).

12465-66-R: OFFICE AND GENERAL EMPLOYEES ASSOCIATION OF STEWART-WARNER CORPORATION OF CANADA LIMITED BELLEVILLE, ONTARIO (APPLICANT) V. STEWART-WARNER CORPORATION OF CANADA LIMITED BELLEVILLE ONTARIO (RESPONDENT) V. SWACO EMPLOYEES' GUILD (INTERVENER). (43 EMPLOYEES).

12478-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. C. A. PITTS GENERAL CONTRACTOR LIMITED (RESPONDENT). (9 EMPLOYEES).

12485-66-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1250 (APPLICANT) V. E. S. MARTIN CONSTRUCTION LIMITED (RESPONDENT). (6 EMPLOYEES).

12496-66-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA (CLC)-(AFL) (CIO) (APPLICANT) V. TARLTON CONSTRUCTION LIMITED 912 RUE McEACHRAN MONTREAL, P.Q. (RESPONDENT). (24 EMPLOYEES).

12505-66-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. MELDON CONSTRUCTION LIMITED (GENERAL CONTRACTOR) (RESPONDENT). (11 EMPLOYEES).

12506-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. BOT CONSTRUCTION LIMITED (RESPONDENT). (12 EMPLOYEES).

APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF
DURING DECEMBER

12317-66-R: CARRIE FILE (APPLICANT) V. GENERAL TRUCK DRIVERS' LOCAL 879 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT) V. AGNEW-SURPASS SHOE STORES LIMITED (INTERVENER).

UNIT: "ALL WAREHOUSE EMPLOYEES OF AGNEW-SURPASS SHOE STORES LIMITED AT BRANTFORD, SAVE AND EXCEPT ASSISTANT WAREHOUSE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT WAREHOUSE MANAGER, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (32 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	32
NUMBER OF PERSONS WHO CAST BALLOTS	32
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	2
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	30

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING DECEMBER

12460-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. DOMINION TAPE OF CANADA LIMITED (RESPONDENT) V. CORNWALL GENERAL WORKERS UNION LOCAL 1617 C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING DECEMBER

12468-66-U: ROBERT McALPINE LTD. (APPLICANT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 18 (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 698).

12523-66-U: ALGOMA TIRE & RUBBER SERVICES (APPLICANT) V. A. ALVES, ET AL (RESPONDENTS).

12561-66-U: ALGOMA STEEL CORPORATION LIMITED (APPLICANT) V. L. ANSLEY, ET AL (RESPONDENTS).

12562-66-U: ALGOMA STEEL CORPORATION LIMITED (APPLICANT) V. S. ALLEN, ET AL (RESPONDENTS).

APPLICATION FOR DECLARATION THAT LOCKOUT UNLAWFUL DISPOSED OF DURING DECEMBER

12480-66-U: LOCAL 915 OF THE OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (APPLICANT) V. BIGELOW-LIPTAK OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATION FOR CONSENT TO PROSECUTE DISPOSED OF DURING DECEMBER

12481-66-U: LOCAL 915 OF THE OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (APPLICANT) V. BIGELOW-LIPTAK OF CANADA, LIMITED 1 WILLINGDON BOULEVARD TORONTO 18, ONT. (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF

DURING DECEMBER

12118-66-U: PRINTING SPECIALTIES & PAPER PRODUCTS UNION LOCAL 466 (COMPLAINANT) V. DATA BUSINESS FORMS LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 714).

12172-66-U: JOHN NORMAN BIRD (COMPLAINANT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION (RESPONDENT).

12175-66-U: JOHN NORMAN BIRD (COMPLAINANT) V. RIDDELL SHEET METAL (RESPONDENT).

12342-66-U: FUR & LEATHER WORKERS' UNION, LOCAL 82, AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA (COMPLAINANT) V. ALPHA SHOE MFG. CO. LTD. (RESPONDENT).

12378-66-U: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (COMPLAINANT) V. CERTIFIED AUTOMOTIVE PRODUCTS (RESPONDENT).

12423-66-U: TEXTILE WORKERS UNION OF AMERICA AFL-CIO, CLC (COMPLAINANT) V. MONTEX APPAREL INDUSTRIES LIMITED (RESPONDENT).

12459-66-U: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (COMPLAINANT) V. STANDARD REFRACTORIES LIMITED (RESPONDENT).

12495-66-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. DUPLATE CANADA LTD. (RESPONDENT).

12519-66-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #3189 (COMPLAINANT) V. SHELVING DISPLAYS LIMITED (RESPONDENT).

12526-66-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. NORTH AMERICAN PLASTICS LIMITED (RESPONDENT).

APPLICATION UNDER SECTION 34(3) DISPOSED OF DURING

DECEMBER

12333-66-M: AMERICAN MOTORS (CANADA) LIMITED (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W.-C.I.O., AND ITS LOCAL NO. 1285, AMERICAN MOTORS UNIT (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

12393-66-M: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION 1819, AND FORBES GLAZING; BUILDERS GLASS LIMITED; NEW TORONTO GLASS & MIRROR WORKS (APPLICANTS) (GRANTED).

12435-66-M: INTERNATIONAL UNION, DOLL, TOY, AND NOVELTY WORKERS OF THE UNITED STATES AND CANADA, AFL-CIO, AND THE DOLE VALVE COMPANY OF CANADA, LIMITED (APPLICANTS). (GRANTED).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING DECEMBER

12220-66-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. WESTEEL PRODUCTS LIMITED; ROSCO METAL PRODUCTS LIMITED; WESTEEL-ROSCO LIMITED; UNITED STEELWORKERS OF AMERICA (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 718).

REFERENCE TO BOARD PURSUANT TO SECTION 79A OF THE ACT DISPOSED OF

DURING DECEMBER

12399-66-M: UNITED DAIRY AND CREAMERY WORKERS' UNION, LOCAL 493, CHARTERED BY THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION OF AMERICA, AFL:CIO:CLC. (TRADE UNION) V. KRAFT FOOD LIMITED OF BERWICK, ONTARIO (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 729).

12400-66-M: UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA AND ITS LOCAL #241 (TRADE UNION) V. BRANTFORD CONCRETE PIPE COMPANY LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 731).

JURISDICTIONAL DISPUTE

12457-66-JD: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, (UE) AND ITS LOCAL 531 (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION

10804-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE VILLAGE OF POINT EDWARD ARENA COMMISSION (REQUEST DENIED).

INDEXED ENDORSEMENTS - CERTIFICATION

12108-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NO-SAG SPRING COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS F.W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: D. M. STOREY AND P. DALEY FOR THE APPLICANT, EDWARD HANDLEY AND RICHARD A. DENLEY FOR THE RESPONDENT, AND NO ONE FOR THE OBJECTORS.

DECISION OF J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER P.J. O'KEEFE:

(DECEMBER 12, 1966).

. . .

2. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED OCTOBER 18TH, 1966, THIS MATTER WAS LISTED FOR HEARING AT THE REQUEST OF THE APPLICANT TO HEAR REPRESENTATIONS AS TO THE EFFECT TO BE GIVEN TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER.

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT OFFICE MANAGER AND PERSONS ABOVE THE RANK OF OFFICE MANAGER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT GRETCHEN M. ANGE IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT INCLUDED IN THE BARGAINING UNIT.
5. MRS. ELIZABETH E. WOODS A PERSON CLASSIFIED BY THE RESPONDENT AS BOOKKEEPER, SPENDS APPROXIMATELY ONE HOUR A MONTH TYPING THE PLANT, OFFICE AND EXECUTIVE PAYROLL CHEQUES FROM INFORMATION WHICH SHE OBTAINS FROM PAYROLL CARDS. THE RESPONDENT ARGUED THAT BECAUSE SHE HAS KNOWLEDGE OF THE EXECUTIVE PAYROLL SHE IS EMPLOYED IN A CONFIDENTIAL CAPACITY WITH RESPECT TO LABOUR RELATIONS.
6. THE REMUNERATION PAID TO EXECUTIVES IS NOT A MATTER SUBJECT TO COLLECTIVE BARGAINING NOR IS IT DIRECTLY CONNECTED TO ANY SUCH MATTER. WHILE IT IS ACKNOWLEDGED THAT GENERALLY PEOPLE DO NOT WISH TO HAVE THE AMOUNT OF THEIR SALARIES BANDIED ABOUT AND TO THAT EXTENT SUCH MATTERS ARE CONFIDENTIAL, THERE ARE, HOWEVER, MANY OTHER MATTERS WHICH ARE CONFIDENTIAL WHICH ARE NOT DIRECTLY CONNECTED TO LABOUR RELATIONS. SECRET FORMULAE USED IN PRODUCTION PROCESSES ARE A HIGHLY CONFIDENTIAL MATTER. HOWEVER, THEY ARE NOT MATTERS WHICH ARE CONFIDENTIAL IN MATTERS RELATING TO LABOUR RELATIONS. IN ADDITION, THE BOARD TAKES OFFICIAL NOTICE OF THE FACT THAT IT IS NOT UNCOMMON FOR CORPORATIONS TO PUBLISH THE SALARIES PAID TO THEIR CHIEF EXECUTIVE OFFICERS IN THEIR ANNUAL REPORTS.
7. THE BOARD IS THEREFORE OF OPINION THAT KNOWLEDGE OF THE RESPONDENT'S EXECUTIVE PAYROLL IS NOT A MATTER WHICH IS CONFIDENTIAL RELATING TO LABOUR RELATIONS.
8. OUR VIEW OF THE EVIDENCE IN THE INSTANT CASE IS THAT ELIZABETH E. WOODS AND PETER A. AIGELDINGER ARE PRIMARILY EMPLOYED TO PERFORM WORK FALLING WITHIN THE SCOPE OF THE BARGAINING UNIT AND ANY ADDITIONAL FUNCTIONS EXERCISED BY THEM ARE MERELY INCIDENTAL TO THEIR MAIN FUNCTIONS OF PERFORMING WORK ALONG WITH OTHER PERSONS IN THE BARGAINING UNIT.
9. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT ELIZABETH E. WOODS AND PETER A. AIGELDINGER ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.
10. IN ARRIVING AT THIS CONCLUSION, THE BOARD HAS NOTED THE DECISION OF THE BOARD IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, DATED SEPTEMBER 14TH, 1966, BOARD FILE NO. 10775-65-R. THE BOARD STATED AS FOLLOWS:-

MOST OF THE PERSONS IN DISPUTE HAVE MORE THAN ONE FUNCTION AND GENERALLY SPEAKING IT IS THE WEIGHT OR EMPHASIS ATTACHED TO THE DIFFERENT FUNCTIONS WHICH MUST DETERMINE ON WHICH SIDE OF THE MANAGERIAL LINE THAT THE PERSONS FALL. SENIOR OR SKILLED EMPLOYEES OFTEN HAVE MORE RESPONSIBILITIES THAN OTHER RANK AND FILE EMPLOYEES AND THEY EXERCISE CERTAIN CONTROL AND DIRECTION OVER THE OTHER EMPLOYEES BECAUSE OF THEIR GREATER EXPERIENCE AND SKILL. IT IS THE BOARD'S DIFFICULT TASK TO DETERMINE WHETHER THE ADDITIONAL RESPONSIBILITIES ARE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT OR ARE MERELY INCIDENTAL TO THE PRIME PURPOSE FOR WHICH THE EMPLOYEE IS ENGAGED (I.E. TO PERFORM WORK PROPERLY PERFORMED BY PERSONS WITHIN THE BARGAINING UNIT). IF THE MAJORITY OF A PERSON'S TIME IS OCCUPIED BY WORK SIMILAR TO THAT PERFORMED BY EMPLOYEES WITHIN THE BARGAINING UNIT AND SUCH PERSON HAS NO EFFECTIVE CONTROL OR AUTHORITY OVER THE EMPLOYEES IN THE BARGAINING UNIT BUT IS MERELY A CONDUIT CARRYING ORDERS OR INSTRUCTIONS FROM MANAGEMENT TO THE EMPLOYEES, THE PERSON CANNOT BE SAID TO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. ON THE OTHER HAND, IF A PERSON IS PRIMARILY ENGAGED IN SUPERVISION AND DIRECTION OF OTHER EMPLOYEES AND HAS EFFECTIVE CONTROL OVER THEIR EMPLOYMENT RELATIONSHIP, EVEN THOUGH THE PERSON OCCASIONALLY PERFORMS WORK SIMILAR TO THE RANK AND FILE EMPLOYEES WHEN AN EMERGENCY ARISES OR TO RELIEVE AN EMPLOYEE DURING OCCASIONAL PERIODS OF ABSENCE OR EVEN TO PERFORM A PARTICULARLY IMPORTANT JOB REQUIRING SPECIAL SKILL AND EXPERIENCE, SUCH OCCASIONAL WORK IN NO WAY DEROGATES FROM HIS PRIME FUNCTION AS A PERSON EMPLOYED IN A MANAGERIAL CAPACITY. WHEN ASSESSING A PERSON'S DUTIES AND RESPONSIBILITIES THE BOARD DOES NOT LOOK AT ANY ONE FUNCTION IN ISOLATION BUT VIEWS ALL FUNCTIONS IN THEIR ENTIRETY. AS STATED IN THE LOCAL 2890, UNITED STEEL WORKERS OF AMERICA V. THE R. McDOUGALL COMPANY LIMITED CASE 1943 O.W.N. 743], TITLES ALONE ARE NOT OF MUCH ASSISTANCE IN DETERMINING WHAT A PERSON'S FUNCTIONS REALLY ARE.

WHILE THE CASES CITED ABOVE WOULD SEEM TO INDICATE THAT WHILE A PERSON MAY HAVE MINOR SUPERVISORY FUNCTIONS OR VERY LIMITED CONFIDENTIAL FUNCTIONS IN MATTERS RELATING TO LABOUR RELATIONS, IF SUCH FUNCTIONS ARE MERELY INCIDENTAL TO THEIR MAIN FUNCTION AND ARE OF SUCH A NATURE THAT THEY CANNOT BE SAID TO MATERIALLY EFFECT THE EMPLOYMENT RELATIONSHIP OF THE RESPONDENT'S EMPLOYEES, SUCH PERSONS SHOULD NOT BE EXCLUDED FROM COLLECTIVE BARGAINING BY REASON OF SECTION 1(3)(B) OF THE ACT. UNLESS A PERSON

WHO REGULARLY PERFORMS WORK SIMILAR TO PERSONS IN A BARGAINING UNIT HAS INDEPENDENT DISCRETIONARY POWERS RATHER THAN MERELY INCIDENTAL REPORTING FUNCTIONS WHICH ARE SUBJECT TO THE DISCRETION AND AUTHORITY OF HIGHER PERSONS IN MANAGEMENT, THERE IS NO REASON TO EXCLUDE SUCH A PERSON FROM COLLECTIVE BARGAINING.

SIMILAR CRITERIA APPLY TO PERSONS ALLEGED TO BE EMPLOYED IN CONFIDENTIAL CAPACITIES IN MATTERS RELATING TO LABOUR RELATIONS. A PERSON TO BE EXCLUDED UNDER THIS PROVISION MUST BE "EMPLOYED IN A CONFIDENTIAL CAPACITY" I.E., SUCH CAPACITY MUST BE PART OF HIS REGULAR DUTIES. AN ACCIDENTAL OR ISOLATED INVOLVEMENT IN SOME ASPECT OF LABOUR RELATIONS IS NOT SUFFICIENT, IN OUR VIEW, TO EXCLUDE A PERSON FROM COLLECTIVE BARGAINING. HOWEVER, A REGULAR MATERIAL INVOLVEMENT IN MATTERS RELATING TO LABOUR RELATIONS WHICH ARE CONFIDENTIAL BECAUSE THEIR DISCLOSURE WOULD ADVERSELY AFFECT THE INTEREST OF THE EMPLOYER WOULD EXCLUDE A PERSON PURSUANT TO THE PROVISIONS OF SECTION 1(3)(B) OF THE ACT. AS CAN READILY BE SEEN, THE DEGREE OF INVOLVEMENT AND THE EXTENT OF THE CONFIDENTIAL NATURE OF THE MATTERS DEALT WITH BECOME IMPORTANT FACTORS TO BE CONSIDERED IN DETERMINING EXCLUSIONS UNDER THESE PROVISIONS.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

12. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER F. W. MURRAY: DECEMBER 12, 1966.

I DISSENT. I WOULD FIND ON THE BASIS OF ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER THAT MR. AIGELDINGER EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND SHOULD BE EXCLUDED FROM THE BARGAINING UNIT.

I WOULD ALSO FIND ON THE EVIDENCE SET OUT IN THE DECISION OF THE MAJORITY THAT MRS. WOODS HAS SOME CONFIDENTIAL FUNCTIONS WITH RESPECT TO LABOUR RELATIONS AND IS THEREFORE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) AND ACCORDINGLY SHOULD BE EXCLUDED FROM THE BARGAINING UNIT.

12208-66-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 804, (AFL-CIO-CLC) (APPLICANT) V. MUIRHEAD INSTRUMENTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.F. IRWIN.

APPEARANCES AT THE HEARING: H. LORNE MORPHY AND GEORGE PETTA FOR THE APPLICANT,

W. M. TEMPLE AND R. W. WATLER FOR THE RESPONDENT, L. RAY WALLER, GLADYS TAYLOR AND GUENTHER MASCHKE FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER:

DECEMBER 29, 1966.

1. THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT ON SEPTEMBER 6TH, 1966, AND THIS MATTER CAME ON FOR HEARING IN THE FIRST INSTANCE AT TORONTO ON SEPTEMBER 28TH, 1966.

2. AT THE FIRST HEARING, THE RESPONDENT CHALLENGED THE INCLUSION IN THE BARGAINING UNIT OF CERTAIN PERSONS AND CLASSIFICATIONS AND IN PARTICULAR TOOK THE POSITION THAT MRS. GLADYS TAYLOR, ONE OF THE OBJECTORS, EXERCISES MANAGERIAL FUNCTIONS AND SHOULD BE EXCLUDED FROM THE BARGAINING UNIT. BECAUSE MRS. TAYLOR'S STATUS WAS IN DISPUTE, THE BOARD, FOLLOWING ITS USUAL PRACTICE, HAD THE OBJECTORS IDENTIFY THE DOCUMENTS WHICH WERE FILED IN OPPOSITION TO THIS APPLICATION BUT DID NOT COMPLETE ITS INQUIRY INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENTS UNTIL THE QUESTION OF MRS. TAYLOR'S STATUS WAS RESOLVED, AND THE BOARD APPOINTED AN EXAMINER FOR THAT PURPOSE.

3. AT THE FIRST HEARING, THE OBJECTORS CALLED MRS. TAYLOR AND MR. GUENTHER MASCHKE WHO TESTIFIED THAT THEY HAD PERSONAL KNOWLEDGE CONCERNING THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION.

4. COUNSEL FOR THE OBJECTORS, IN ORDER TO FACILITATE THE BOARD'S ASSESSMENT OF THE CREDIBILITY OF THE WITNESSES, AGREED TO EXCLUDE MR. MASCHKE WHILE MRS. TAYLOR TESTIFIED.

5. MRS. TAYLOR TESTIFIED THAT SHE HAD PREVIOUSLY SEEN ALL THREE DOCUMENTS WHICH WERE FILED IN OPPOSITION TO THE APPLICATION. THE FIRST DOCUMENT WAS A RIBBON COPY OF A TYPED STATEMENT WHICH IS REPRODUCED BELOW AS ACCURATELY AS POSSIBLE.

THE UNDERSIGNED EMPLOYEES OF MUIRHEAD INSTRUMENTS LIMITED,
ARE NOT INTERESTED IN HAVING A UNION IN THE PLANT.

EMPLOYEE

WITNESS

ON THE TOP RIGHT HAND CORNER OF THIS DOCUMENT THERE APPEARED IN HANDWRITING THE DATE "SEPTEMBER 14. 1966.".

6. MR. MASCHKE AND MRS. TAYLOR'S SIGNATURES WERE THE FIRST TWO SIGNATURES WHICH APPEARED UNDER THE HEADING "EMPLOYEE". UNDER THE HEADING "WITNESS" MRS. TAYLOR WITNESSED MR. MASCHKE'S SIGNATURE AND MR. MASCHKE WITNESSED MRS. TAYLOR'S SIGNATURE.

7. MRS. TAYLOR TESTIFIED THAT SHE HAD WITNESSED ALL THE OTHER TWENTY SIGNATURES WHICH APPEARED ON THIS DOCUMENT AS EVIDENCED BY HER SIGNATURE UNDER THE HEADING "WITNESS".

8. DOCUMENT NO. 2 WAS A CARBON COPY OF DOCUMENT NO. 1, AND MRS. TAYLOR TESTIFIED THAT SHE WITNESSED ALL TWENTY-FOUR SIGNATURES ON THIS DOCUMENT AS EVIDENCED BY HER SIGNATURE UNDER THE HEADING "WITNESS". THE DATE "SEPTEMBER 13/1966" APPEARED IN HANDWRITING AT THE TOP RIGHT CORNER OF THIS DOCUMENT.

9. THE THIRD DOCUMENT WAS A HANDWRITTEN STATEMENT OF DESIRE WHICH CONTAINED THE SAME WORDS AS WERE TYPED ON DOCUMENTS NO. 1 AND NO. 2. THIS DOCUMENT BORE THE DATE "SEPTEMBER 15. 66.". MRS. TAYLOR TESTIFIED THAT SHE WITNESSED ALL TWELVE SIGNATURES ON THIS DOCUMENT AS EVIDENCED BY HER SIGNATURE UNDER THE HEADING "WITNESS".

10. AT THE FIRST HEARING, MRS. TAYLOR TESTIFIED THAT SHE HAD TYPED THE FIRST TWO DOCUMENTS AND THAT SHE HAD SEEN MR. MASCHKE WRITE THE HEADING ON THE THIRD DOCUMENT WHICH WAS COPIED FROM THE HEADING ON THE TYPED DOCUMENTS.

11. WHEN MR. MASCHKE WAS CALLED TO TESTIFY AT THE FIRST HEARING, HE ALLEGED THAT HE HAD TYPED THE FIRST TWO DOCUMENTS AND THAT HIS WIFE HAD WRITTEN THE HEADING ON THE THIRD DOCUMENT WHILE HE WAS HOME FOR HIS LUNCH ONE NOON HOUR.

12. MR. MASCHKE ALSO TESTIFIED THAT HE WAS PRESENT WHEN ALL PERSONS SIGNED THE DOCUMENTS.

13. THE HEARING IN THIS MATTER WAS CONTINUED IN STRATFORD AT THE REQUEST OF THE OBJECTORS WITH THE CONSENT OF THE OTHER PARTIES ON DECEMBER 2ND, 1966. AT THIS SECOND HEARING IT WAS AGREED BY ALL PARTIES THAT MRS. TAYLOR DID NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND WAS ELIGIBLE FOR INCLUSION IN ANY BARGAINING UNIT DEEMED BY THE BOARD TO BE APPROPRIATE.

14. AT THE HEARING IN STRATFORD, COUNSEL FOR THE OBJECTORS AGREED THAT MR. MASCHKE SHOULD BE EXCLUDED DURING MRS. TAYLOR'S TESTIMONY AND THAT MRS. TAYLOR SHOULD BE EXCLUDED WHEN MR. MASCHKE TESTIFIED.

15. MRS. TAYLOR TESTIFIED THAT PRIOR TO THE APPLICATION BEING MADE, AFTER HAVING BEEN APPROACHED BY A UNION ORGANIZER, SHE WENT TO SEE MR. AUSTIN, THE RESPONDENT'S PRODUCTION MANAGER. SHE WANTED INFORMATION FROM MR. AUSTIN CONCERNING WHAT EMPLOYEES COULD DO IF THEY DID NOT WANT THE UNION. MRS. TAYLOR TESTIFIED THAT MR. AUSTIN INFORMED HER THAT IT WAS AGAINST COMPANY POLICY FOR HIM TO HELP HER IN THIS MATTER. MRS. TAYLOR TESTIFIED THAT ON FRIDAY, SEPTEMBER 9TH, SHORTLY AFTER THE 5:00 P.M. QUITTING TIME SHE WAS CALLED BY MR. AUSTIN INTO HIS OFFICE AND MR. MASCHKE WAS ALSO IN ATTENDANCE. MRS. TAYLOR STATED THAT MR. AUSTIN SAID TO THEM THAT "SEEING THAT YOU TWO ARE INTERESTED I'D LIKE YOU TO READ THIS FORM (FORM 5, NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING, HEREINAFTER REFERRED TO AS THE "GREEN SHEET") AT YOUR CONVENIENCE AND DECIDE WHAT YOU SHOULD DO IF ANYTHING". MRS. TAYLOR CLAIMED THAT THEY WERE NOT GIVEN THE GREEN SHEET TO READ THAT EVENING, BUT ON SATURDAY MORNING WHEN THEY CAME INTO WORK THE

GREEN SHEET WAS POSTED AND IT WAS AT THAT TIME THAT SHE AND MR. MASCHKE READ THE SHEET. SHE TESTIFIED THAT SHE TALKED IT OVER WITH MR. MASCHKE AND THEY DECIDED TO PREPARE A PETITION. MRS. TAYLOR TESTIFIED THAT SHE MADE UP THE HEADING ON THE PETITION BUT THAT SHE DID NOT DO THE TYPING. SHE FURTHER TESTIFIED THAT IT WAS HER UNDERSTANDING THAT MR. MASCHKE DID THE TYPING BUT SHE HAD NOT SEEN HIM DO IT. SHE FURTHER TESTIFIED THAT SHE HAD NOT SEEN MR. MASCHKE WRITE THE HEADING ON DOCUMENT NO. 3. SHE ATTEMPTED TO JUSTIFY HER EVIDENCE CONCERNING THE TYPING OF THE DOCUMENT WHICH SHE GAVE AT THE SECOND HEARING, WHICH CONFLICTED WITH HER EVIDENCE AT THE FIRST HEARING, BY STATING THAT SHE HAD BEEN A LITTLE ON THE NERVOUS SIDE AT THE FIRST HEARING BECAUSE SHE HAD NEVER BEEN IN A COURT ROOM BEFORE. WHEN SHE SAID SHE TYPED THE DOCUMENT AT THE FIRST HEARING WHAT SHE REALLY MEANT WAS THAT SHE HAD PRINTED THE DOCUMENT FOR MR. MASCHKE TO TYPE.

16. MRS. TAYLOR TESTIFIED THAT SHE HAD NEVER TALKED ABOUT THE UNION WITH MR. MASCHKE PRIOR TO THE MEETING IN MR. AUSTIN'S OFFICE ON FRIDAY, SEPTEMBER 9TH. SHE FURTHER STATED THAT WHEN SHE ATTENDED AT MR. AUSTIN'S OFFICE SHE DID NOT KNOW THAT MR. MASCHKE WOULD BE PRESENT. SHE ALSO TESTIFIED THAT SHE HAD NO DISCUSSION WITH MR. MASCHKE ON FRIDAY, SEPTEMBER 9TH FOLLOWING THE MEETING IN MR. AUSTIN'S OFFICE AND THAT THE FIRST TIME THEY DISCUSSED OPPOSING THE UNION WAS AFTER THEY HAD READ THE GREEN SHEET ON SATURDAY MORNING.

17. MRS. TAYLOR TESTIFIED THAT MR. MASCHKE PRODUCED THE TYPED PETITIONS AFTER THE COFFEE BREAK ON SATURDAY MORNING. HOWEVER, SHE ALSO TESTIFIED THAT HE BROUGHT IT BACK AT THE COFFEE BREAK AND THAT THE SIGNATURES WERE OBTAINED DURING THE COFFEE BREAK ON SATURDAY MORNING. MRS. TAYLOR TESTIFIED THAT BOTH SHE AND MR. MASCHKE CIRCULATED THROUGH THE PLANT OBTAINING SIGNATURES DURING WORKING HOURS ON SATURDAY UNTIL MR. REED, A FORMAN, SPOKE TO MR. MASCHKE AND INDICATED THAT HE WAS DISTURBED ABOUT THEIR GOING AROUND DURING WORKING HOURS. SHE TESTIFIED THAT AFTER OBTAINING THE SIGNATURES BOTH SHE AND MR. MASCHKE PUNCHED OUT AT APPROXIMATELY 9:45 A.M. HOWEVER, THEY CONTINUED TO WORK UNTIL NOON HOUR IN ORDER TO MAKE UP FOR THE TIME THEY HAD LOST OBTAINING SIGNATURES.

18. WHEN MRS. TAYLOR WAS ASKED TO IDENTIFY SIGNATURES WHICH HAD BEEN OBTAINED AWAY FROM THE PLANT SHE IDENTIFIED SIGNATURES NO. 56 AND NO. 58 AS HAVING BEEN OBTAINED AT THE HOMES OF THE PEOPLE CONCERNED BETWEEN 12:00 NOON AND 1:00 P.M. ON THE LAST DAY THE PETITIONS WERE CIRCULATED AND THAT SIGNATURE NO. 57 HAD BEEN OBTAINED AT THE PLANT. BY WAY OF CLARIFICATION, MRS. TAYLOR STATED THAT SHE AND MR. MASCHKE HAD LEFT THE PLANT AND GONE TO THE HOME OF THE PERSON IDENTIFIED AS SIGNATURE NO. 56, OBTAINED THAT SIGNATURE, WHEREUPON THEY RETURNED TO THE PLANT AND OBTAINED SIGNATURE NO. 57. BOTH SHE AND MR. MASCHKE AGAIN LEFT THE PLANT AND OBTAINED SIGNATURE NO. 58 AT THAT PERSON'S HOME, ALL DURING THE SAME NOON HOUR PERIOD ON SEPTEMBER 15TH.

19. At the second hearing, Mr. Maschke testified that he had typed documents No. 1 and No. 2 on Saturday morning at approximately 9:15 during the coffee break on a typewriter in the respondent's drafting office. He further testified that it took him approximately ten minutes to type the document but that he succeeded in typing the heading on the document on his first try. When the Board expressed surprise at the fact that the document was typed in virtually a perfect form Mr. Maschke insisted that he was the person who, in fact, typed the document and that he succeeded in typing it in that form on his first attempt.

20. Mr. Maschke also testified that on Friday, September 9th Mr. Austin had called him and Mrs. Taylor from the line-up of employees who were waiting to punch out at 5:00 p.m. and took them into his office. He stated that Mr. Austin advised them that the company had received a notice from the Board which he would hang up and that he and Mrs. Taylor would have to decide what they should do. Mr. Austin stated that he was not to give them support but that it was entirely up to them. Mr. Austin further stated that "you two have been bugging me the most about what you can do about the union. I will hang the sheet on the board and you can study it and decide what to do".

21. Mr. Maschke testified that on Saturday morning he and Mrs. Taylor obtained about twelve to fifteen signatures during working hours. Mr. Maschke testified that Mr. Austin, the production manager, had told him he was not allowed to circulate the petition during working hours and that he was to do it on his own time. Mr. Maschke testified that he and Mrs. Taylor punched out before 11:00 o'clock Saturday morning and got the first signature on the petition after that time.

22. Later, Mr. Maschke testified that he punched out on Saturday morning after Mr. Reed, the foreman, spoke to him but that he had not punched out until after he had gotten all the signatures. Mr. Maschke testified that all but two of the signatures were obtained at the plant and in particular all the signatures on document No. 3 were obtained at the plant. Document No. 3 contains signatures No. 56 and No. 58. Mr. Maschke, however, testified that the two signatures which had been obtained away from the premises were signatures No. 35 and No. 36. He testified that signature No. 35 was obtained at that person's home at 6:00 p.m. and signature No. 36 was obtained at the person's home between 8:00 p.m. and 9:00 p.m. The reason for obtaining signature No. 36 at that late hour was that the person had instructed Mr. Maschke and Mrs. Taylor to come to his home after dark.

23. Following Mr. Maschke's oral testimony, at the suggestion of the Board, and with the agreement of the parties, the respondent produced at the hearing, the typewriter from the respondent's drafting office. This typewriter had an extraordinary long carriage and was used by the respondent for typing on plans. The respondent testified that there was only one typewriter on the respondent's premises which had this extraordinary long carriage. Mr. Maschke stated that he recognized the typewriter by its long carriage and that it was the typewriter he had used to type the heading on documents No. 1 and No. 2. Mr. Maschke

AGREED TO TYPE A SPECIMEN HEADING AND WAS AFFORDED AN OPPORTUNITY BY THE BOARD TO DO SO WHILE ALONE IN A PRIVATE OFFICE. IN ORDER TO DUPLICATE THE CONDITIONS WHICH EXISTED WHEN HE ALLEGED THAT HE HAD TYPED THE FIRST DOCUMENT, THE BOARD REQUESTED MRS. TAYLOR TO PRINT THE HEADING ON A BLANK PIECE OF PAPER COPYING THE HEADING WHICH APPEARED ON THE PETITION FILED.

24. MR. MASCHKE WAS INVITED BY THE BOARD TO REPRODUCE AS ACCURATELY AS HE COULD THE PETITION WHICH WAS FILED AND ALTHOUGH HE DID NOT HAVE THE ORIGINAL PETITION BEFORE HIM DURING THE TYPING TEST HE HAD VIEWED IT ON SEVERAL OCCASIONS DURING THE COURSE OF HIS ORAL TESTIMONY.

25. MR. MASCHKE TYPED A HEADING ON A BLANK PIECE OF PAPER USING THE TYPEWRITER PRODUCED BY THE RESPONDENT. MR. MASCHKE'S ATTEMPT IS REPRODUCED BELOW AS ACCURATELY AS POSSIBLE.

THE UNDERSIGNED EMPLOYEES OF MUIRHEAD INSTRUMENTS
LIMITED ARE NOT INTERESTED IN HAVING A UNION
IN THE PLANT

EMPLOYEE

*WITNES

26. DIFFERENCES IN THE HEADING ON THE PETITION FILED AND THE TYPING BY MR. MASCHKE WHICH THE BOARD HAS NOTED ARE AS FOLLOWS. THE HEADING ON THE SPECIMEN COMPRISES THREE INSTEAD OF TWO LINES. DIFFERENT KEYS WERE USED FOR THE PURPOSE OF UNDERLINING. THERE APPEARS TO BE FOUR TYPING ERRORS. THE UNDERLINING EXTENDS BEYOND THE WORD "EMPLOYEE", THE WORD "WITNES" AND THE HEADING. AN ASTERISK APPEARS PRIOR TO THE WORD "WITNES" AND NO COMMA OR PERIOD APPEAR IN THE HEADING.

27. APART FROM THE DIFFERENCES NOTED ABOVE, IT IS READILY APPARENT, WHEN THE SPECIMEN TYPED AT THE HEARING BY MR. MASCHKE IS COMPARED WITH THE PETITION SUBMITTED TO THE BOARD IN THIS MATTER, THAT THE TWO DOCUMENTS WERE TYPED ON DIFFERENT TYPEWRITERS. THIS FACT WAS BROUGHT TO THE ATTENTION OF THE PARTIES BY THE BOARD PRIOR TO HEARING ARGUMENT BY COUNSEL.

28. SUBSEQUENT TO THE HEARING, THE BOARD RECEIVED A LETTER FROM THE RESPONDENT WHICH STATED THAT THE RESPONDENT HAD ANOTHER SPARE TYPEWRITER WHICH ALSO HAD A LONG CARRIAGE WHICH MIGHT HAVE BEEN CONFUSED WITH THE TYPEWRITER PRODUCED AT THE HEARING. THE RESPONDENT PROVIDED SPECIMEN TYPING FROM THIS SECOND TYPEWRITER TO BE COMPARED WITH THE TYPING ON THE PETITION. ASSUMING, BUT NOT FINDING, THAT THIS ADDITIONAL EVIDENCE IS ADMISSIBLE, THE BOARD AGAIN FINDS THAT THE ADDITIONAL SPECIMEN TYPING IS READILY DISTINGUISHABLE FROM THE TYPING THAT APPEARS ON THE PETITION SUBMITTED TO THE BOARD.

29. THE BOARD FINDS THAT NEITHER THE TYPEWRITER PRODUCED AT THE HEARING NOR THE TYPEWRITER WHICH PRODUCED THE ADDITIONAL SPECIMEN TYPING SUBMITTED BY THE RESPONDENT WAS THE TYPEWRITER WHICH WAS USED TO TYPE THE PETITION SUBMITTED TO THE BOARD IN THIS MATTER.

30. THE BOARD FURTHER FINDS THAT THE MEETING BETWEEN MR. AUSTIN, MRS. TAYLOR AND MR. MASCHKE WHICH PRECEDED THE PREPARATION OF THE PETITION WAS INTENDED BY MR. AUSTIN TO HAVE THE EFFECT WHICH IT, IN FACT, HAD. THERE CAN BE NO DOUBT THAT BOTH MRS. TAYLOR AND MR. MASCHKE UNDERSTOOD THAT MR. AUSTIN WANTED THEM TO OPPOSE THE UNION. MR. AUSTIN BROUGHT THEM TOGETHER FOR THE FIRST TIME AND SPECIFICALLY DIRECTED THEIR ATTENTION TO FORM 5 IN SUCH A MANNER THAT IT MUST HAVE BECOME READILY APPARENT TO THEM THAT THEY WERE EXPECTED BY MR. AUSTIN TO CIRCULATE A PETITION. WE ARE ALSO OF OPINION THAT THE MANNER IN WHICH MR. AUSTIN INVITED THEM TO HIS OFFICE, IN FRONT OF ALL THE EMPLOYEES, WOULD CAUSE THE EMPLOYEES WHO WITNESSED THE EVENT TO ASSOCIATE MR. AUSTIN WITH THE PETITION WHICH WAS CIRCULATED BY MRS. TAYLOR AND MR. MASCHKE OPENLY IN THE PLANT THE FOLLOWING DAY.

31. HAVING REGARD TO ALL THE EVIDENCE AND HAVING HAD AN OPPORTUNITY TO ASSESS THE CREDIBILITY OF MRS. TAYLOR AND MR. MASCHKE AS EVIDENCED BY THEIR DEMEANOUR IN THE WITNESS BOX AND THE MANY DISCREPANCIES AND CONFLICTS IN THEIR TESTIMONY, AND IN PARTICULAR THE DISCREPANCIES OUTLINED BELOW, THE BOARD IS NOT SATISFIED WITH THE EVIDENCE CONCERNING THE ORIGINATION AND CIRCULATION OF THE PETITIONS. THE BOARD HAS TAKEN SPECIAL NOTE OF THE INITIAL CONFLICT CONCERNING THE IDENTITY OF THE PERSON WHO TYPED THE PETITIONS. THE CONFLICT AS TO WHERE AND WHEN SIGNATURES NO. 57 AND NO. 59 WERE OBTAINED WAS NEVER EXPLAINED. THE FACT MRS. TAYLOR AT FIRST SAID SHE SAW MR. MASCHKE WRITE THE HEADING ON THE THIRD DOCUMENT WHEREAS MR. MASCHKE TESTIFIED THAT HIS WIFE WROTE THAT DOCUMENT CANNOT BE CHARACTERIZED AS AN INCIDENTAL CONFUSION OF FACT. WHILE THE DIFFERENCE IN THE TYPING PRODUCED BY MR. MASCHKE AT THE HEARING AND THE TYPING APPEARING ON THE PETITION MAY NOT BE CONCLUSIVE, IN ITSELF, THE FACT THAT TWO DIFFERENT TYPEWRITERS WERE USED TO PRODUCE THE PETITION AND THE SPECIMEN PRODUCED AT THE HEARING, ALTHOUGH MR. MASCHKE SPECIFICALLY IDENTIFIED THE TYPEWRITER PRODUCED AT THE HEARING, HAS CAUSED THE BOARD SERIOUS CONCERN.

32. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENTS SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

33. WHILE MRS. TAYLOR TESTIFIED THAT SHE HAD NO PREVIOUS EXPERIENCE AS A WITNESS BEFORE A BOARD OR A COURT AND WHILE COUNSEL ATTEMPTED TO JUSTIFY THE DISCREPANCIES ON THIS GROUND, WE FEEL OBLIGED TO STATE THAT THE BOARD DOES NOT EXPECT PERSONS TO BE EXPERIENCED AS WITNESSES BUT WE DO EXPECT PEOPLE TO BE EXPERIENCED WITH THE TRUTH. IT IS NORMAL THAT THERE SHOULD BE SOME DISCREPANCIES OVER TRIVIAL DETAIL AND CERTAIN ERRORS

CAUSED BY NERVOUSNESS. HOWEVER, THE MULTITUDE OF DISCREPANCIES AND CONFLICTS IN AREAS OF SUBSTANCE IN THE INSTANT CASE CANNOT BE SO READILY EXPLAINED AWAY.

34. IN VIEW OF THE RESULT, IT WILL NOT BE NECESSARY FOR THE BOARD TO DIRECT A FURTHER HEARING TO INQUIRE INTO THE ALLEGATIONS OF UNFAIR CONDUCT MADE BY THE APPLICANT IN THIS CASE.

35. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

36. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT STRATFORD, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE, PURCHASING AND SALES STAFF, NURSES, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

37. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT HARRY HAYHOW, CATHERINE YOUNG, FRANK LYONS, AND PERSONS CLASSIFIED BY THE RESPONDENT AS ENGINEERS, DRAFTSMEN, AND RESEARCH AND DEVELOPMENT TECHNICIANS ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF.

38. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT ALFRED COATSWORTH EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT INCLUDED IN THE BARGAINING UNIT.

39. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT GLADYS TAYLOR DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

40. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

41. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN: DECEMBER 29, 1966.

DOCUMENTS WERE SUBMITTED TO THE BOARD IN OPPOSITION TO THIS APPLICATION BY A GROUP OF EMPLOYEES OF THE RESPONDENT WHO WERE REPRESENTED AT THE HEARING BY TWO FELLOW EMPLOYEES, MRS. GLADYS TAYLOR AND MR. GUNTHER MASCHKE.

WHEN CONDUCTING ITS USUAL ENQUIRY INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENTS FILED WITH THE BOARD BY THE INTERVENING EMPLOYEES IN OPPOSITION TO THE APPLICATION, MRS. TAYLOR WAS IN THE WITNESS BOX GIVING EVIDENCE UNDER EXAMINATION FOR APPROXIMATELY TWO HOURS WITHOUT A BREAK AND MR. MASCHKE FOR APPROXIMATELY ONE AND ONE-HALF HOURS. AFTER EXHAUSTIVE ENQUIRY BY THE BOARD, THEY WERE SUBJECT TO FURTHER QUESTIONS PUT TO THEM THROUGH THE CHAIRMAN BY COUNSEL FOR THE APPLICANT WHICH WAS EQUIVALENT TO VIGOROUS CROSS-EXAMINATION. WHILE THERE MAY HAVE BEEN SOME DISCREPANCIES IN THEIR EVIDENCE, I AM NOT PREPARED TO FIND MRS. TAYLOR AND MR. MASCHKE GUILTY OF PERJURY BY BEING DELIBERATELY UNTRUTHFUL IN GIVING THEIR EVIDENCE SO AS TO MISLEAD THE BOARD. IF THE PERSONS WHO WITNESSED THE SIGNING OF THE APPLICANT UNION'S MEMBERSHIP CARDS WERE SUBJECT TO SIMILAR QUESTIONING AS TO HOW, WHEN, AND UNDER WHAT CIRCUMSTANCES THE CARDS WERE SIGNED, I AM SURE THERE WOULD BE DISCREPANCIES IN THEIR EVIDENCE ALSO.

AS TO THE TYPEWRITING TEST WHICH MR. MASCHKE AGREED TO BE SUBMITTED TO, THE TYPEWRITER USED WAS BROUGHT FROM THE RESPONDENT'S PLANT TO THE HEARING ROOM WHEN OUTSIDE TEMPERATURES WERE NEAR 0° F. THE MACHINE, THEREFORE, WAS COLD. MR. MASCHKE WAS GIVEN ONE SHEET OF PAPER BUT NO ERASER. THE HEADING WRITTEN ON A PIECE OF PAPER BY MRS. TAYLOR FROM WHICH HE TYPED WAS WRITTEN IN THREE LINES. OUTSIDE OF STRIKING THE "T" KEY WHEN HE SHOULD HAVE STRUCK THE "D" KEY IN THE WORD "UNDERSIGNED", THERE ARE NO OTHER MISTAKES IN THE HEADING AND IT IS REASONABLY WELL SET UP IN RESPECT OF SPACING AND CENTERING. BEARING IN MIND THAT HE HAD NO ERASER TO CORRECT THE ERROR, I COULD NOT POSSIBLY CONCLUDE THAT MR. MASCHKE DID NOT TYPE THE HEADING ON THE ORIGINAL DOCUMENT.

HOWEVER, IN ALL THE CIRCUMSTANCES OF THIS CASE, I AM IMPELLED TO FIND THAT THE PETITIONS IN OPPOSITION TO THE APPLICATION FILED BY THE INTERVENING EMPLOYEES DO NOT WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO REQUIRE CONFIRMATORY EVIDENCE BY DIRECTING A REPRESENTATION VOTE. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12344-66-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, LOCAL UNION 185 (APPLICANT) v. COLEMAN PACKING CO. LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: W. E. FALLS FOR THE APPLICANT, AND HAMILTON WALSH AND JOHN K. WATSON FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE:

DECEMBER 20, 1966.

. . .

4. THE APPLICANT AND THE RESPONDENT AGREED THAT THE BARGAINING UNIT BE DESCRIBED IN THE FOLLOWING TERMS: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON WHO NORMALLY WORK TWENTY-FOUR HOURS PER WEEK OR LESS, STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING VACATION PERIOD".

5. IT WAS CONTENDED BY THE RESPONDENT THAT THE PERSONS IN THE PROPOSED BARGAINING UNIT ARE COVERED BY THE PROVISIONS OF ARTICLE III OF A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT, AND THAT THERE SHOULD NOT BE SEPARATE CERTIFICATION PROCEEDINGS.

6. ARTICLE III IS HEADED "EMPLOYEES". THE RELEVANT PORTIONS ARE AS FOLLOWS:-

1. THE TERM "EMPLOYEES" AS USED IN THIS AGREEMENT SHALL BE CONSIDERED TO INCLUDE ALL EMPLOYEES OF THE COMPANY'S PLANT WITH THE FOLLOWING EXCEPTIONS:

EXECUTIVE OFFICERS, BUYERS, SALESMEN, OFFICE AND CLERICAL STAFF, INCLUDING ALL IN THE SUPERINTENDENT'S OFFICE AND TIME OFFICE, SUPERINTENDENTS, CHIEF ENGINEER, FOREMEN (NOT MORE THAN TWELVE (12) FOREMEN), AND CHEMICAL LABORATORY WORKERS.

2. PART-TIME WORKERS, THAT IS, EMPLOYEES NORMALLY EMPLOYED FOR TWENTY-FOUR (24) HOURS WEEKLY OR LESS, AND CASUAL AND TEMPORARY EMPLOYEES EMPLOYED FOR LESS THAN FIVE (5) CONSECUTIVE WORKING DAYS. STUDENTS ENGAGED FOR SUMMER VACATIONS ONLY, AFTER TWO (2) MONTHS OF SERVICE SHALL BECOME MEMBERS OF THE UNION AS A CONDITION OF FURTHER EMPLOYMENT, BUT WILL NOT NECESSARILY BE PAID BASIC RATES OF PAY. - - -

7. ARTICLE IV OF THE AGREEMENT EMBODIES THE RECOGNITION BY THE COMPANY OF THE UNION AS EXCLUSIVE BARGAINING AGENT FOR "ALL EMPLOYEES AS DEFINED IN ARTICLE 3, ABOVE".

8. BECAUSE OF THE MANNER IN WHICH IT IS PHRASED AND PHYSICALLY SET OUT IN THE AGREEMENT, THE INTENT OF ARTICLE III IS NOT READILY DISCERNIBLE AT FIRST GLANCE. IT WOULD APPEAR, HOWEVER, THAT IF ANY REASONABLE MEANING IS TO BE ATTACHED TO PARAGRAPH 2 OF THE ARTICLE, PART TIME WORKERS, DESCRIBED IN THE ARTICLE AS EMPLOYEES NORMALLY EMPLOYED FOR TWENTY-FOUR HOURS WEEKLY OR LESS, AND CASUAL AND TEMPORARY EMPLOYEES WHO ARE EMPLOYEES EMPLOYED FOR LESS THAN FIVE CONSECUTIVE WORKING DAYS, MUST BE DEEMED TO BE EXCLUDED FROM THE SCOPE OF THE BARGAINING UNIT CONTEMPLATED BY THE COLLECTIVE AGREEMENT. UNLESS THAT IS DONE AND THAT PORTION OF SECTION 2 DEALING WITH THE ABOVE TYPES OF EMPLOYEES IS READ AS BEING AN EXTENSION OF SECTION 1 OF ARTICLE III, IT IS ENTIRELY MEANINGLESS.

9. LEAVING FOR THE MOMENT THE QUESTION AS TO WHETHER "STUDENTS EMPLOYED IN OFF SCHOOL HOURS" FALL WITHIN THE AMBIT OF THE TERMS "CASUAL" AND "TEMPORARY", WE PROCEED TO EXAMINE THE STATUS OF STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD. IN OUR OPINION, IN ORDER, AGAIN, TO RENDER SECTION 2 MEANINGFUL, THE SENTENCE COMMENCING "STUDENTS ENGAGED" MUST BE SEPARATED FROM THE PRECEDING SENTENCE AND INTERPRETED AS INTRODUCING A NEW SUBJECT QUITE DISTINCT FROM WHAT HAS BEEN DEALT WITH EARLIER IN THE SECTION, AND HAVING TO DO ONLY WITH STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD. IT SEEMS TO US THAT THIS SENTENCE EVIDENCES AN AGREEMENT RESULTING FROM BARGAINING WITH RESPECT TO STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD. IT PROVIDES FOR THEIR COMPULSORY MEMBERSHIP IN THE UNION AFTER TWO MONTHS AND EXEMPTS THE COMPANY FROM ANY OBLIGATION TO PAY THE BASIC RATES EVEN AFTER THEY BECOME MEMBERS. UNION MEMBERSHIP AND RATES OR REMUNERATION, IT NEED HARDLY BE SAID, ARE CLASSIC BARGAINING ITEMS.

10. IN VIEW OF THE FOREGOING, THE BOARD FINDS THAT STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD ARE COVERED BY THE TERMS OF A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE COMPANY AND THE APPLICANT UNION. FOR THE REASONS OUTLINED IN THE DECISION OF THE BOARD IN LOBLAW GROCETERIAS COMPANY LIMITED, HAMILTON, ONTARIO CASE, (1944) D.L.S. 7-115, THE APPLICATION INsofar AS IT CONCERNS STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD IS DISMISSED.

11. THE CLASS OF EMPLOYEES DESCRIBED IN THE PROPOSED BARGAINING UNIT AS "STUDENTS EMPLOYED IN OFF SCHOOL HOURS" ARE NOT REFERRED TO IN THE SCOPE CLAUSE OF THE AGREEMENT, ALTHOUGH, IN VIEW OF THE REQUEST MADE BY THE APPLICANT AND THE RESPONDENT FOR THEIR INCLUSION IN THE UNIT, FOR WHICH THE APPLICANT SEEKS CERTIFICATION AS BARGAINING AGENT, THERE CAN BE NO DOUBT THEY EXIST. ON THE OTHER HAND, "CASUAL AND TEMPORARY EMPLOYEES EMPLOYED FOR LESS THAN FIVE CONSECUTIVE WORKING DAYS" REFERRED TO IN THE SCOPE CLAUSE OF THE AGREEMENT ARE NOT SOUGHT TO BE INCLUDED IN THE PROPOSED BARGAINING UNIT.

12. THE DIFFICULTY INHERENT IN THIS SITUATION MIGHT BE READILY RESOLVED IF IT COULD BE FOUND THAT THE TERMS WERE EITHER INTERCHANGEABLE OR THAT ONE INCLUDES THE OTHER. IT WOULD APPEAR OBVIOUS THAT IF THE CONTRACT LANGUAGE REFERRED ONLY TO "CASUAL AND TEMPORARY EMPLOYEES", THAT THESE TERMS MUST INCLUDE STUDENTS EMPLOYED IN OFF SCHOOL HOURS. SO SIMPLE A SOLUTION IS FRUSTRATED, HOWEVER, BY THE DEFINITIVE WORDS ATTACHING TO THAT TERM, INDICATING THAT IT IS RESTRICTED IN ITS APPLICATION TO EMPLOYEES "EMPLOYED FOR LESS THAN FIVE CONSECUTIVE WORKING DAYS". THIS DEFINITION COULD, OF COURSE, APPLY TO CERTAIN STUDENTS WORKING IN OFF SCHOOL HOURS, BUT IT DOES NOT NECESSARILY COVER ALL SUCH STUDENTS, SOME OF WHOM, OBVIOUSLY, COULD QUITE EASILY BE EMPLOYED IN OFF SCHOOL HOURS FOR FIVE CONSECUTIVE WORKING DAYS. ON THE OTHER HAND, IT DOES NOT SEEM REASONABLE TO SUGGEST THAT THE WORDS "STUDENTS EMPLOYED IN OFF SCHOOL HOURS" ARE BROAD ENOUGH IN SCOPE TO COVER THE EMPLOYEES DESCRIBED AS "CASUAL AND

TEMPORARY EMPLOYEES EMPLOYED FOR LESS THAN FIVE CONSECUTIVE WORKING DAYS". IN OTHER WORDS, THE LANGUAGE OF THE CONTRACT, COUPLED WITH THE REQUEST OF THE PARTIES WITH RESPECT TO THE BARGAINING UNIT, LEADS TO THE INEVITABLE CONCLUSION THAT THERE ARE, IN THE INSTANT CONTEXT, TWO DISTINCT CLASSES OF EMPLOYEES, NAMELY, CASUAL AND TEMPORARY EMPLOYEES AND STUDENTS EMPLOYED DURING OFF SCHOOL HOURS.

13. IT FOLLOWS FROM THE FOREGOING THAT SINCE STUDENTS EMPLOYED DURING OFF SCHOOL HOURS DO NOT FALL WITHIN THE CONTRACTUAL EXCEPTION OF CASUAL AND TEMPORARY EMPLOYEES, AND SINCE THEY ARE NOT SPECIFICALLY EXCEPTED, THEY ARE INCLUDED IN THE "ALL EMPLOYEE" BARGAINING UNIT SET OUT IN THE AGREEMENT AND FALL WITHIN THE TERMS OF THAT AGREEMENT. FOR THE REASONS GIVEN WITH RESPECT TO STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, THE APPLICATION WITH RESPECT TO STUDENTS EMPLOYED IN OFF SCHOOL HOURS IS DISMISSED.

14. IN THE RESULT, THEN, THERE REMAIN BEYOND THE AMBIT OF THE BARGAINING UNIT COVERED BY THE COLLECTIVE AGREEMENT, THE FOLLOWING EMPLOYEES: EMPLOYEES NORMALLY (TO USE THE WORDS OF THE AGREEMENT) EMPLOYED FOR TWENTY-FOUR HOURS WEEKLY OR LESS AND CASUAL AND TEMPORARY EMPLOYEES EMPLOYED FOR LESS THAN FIVE CONSECUTIVE WORKING DAYS. KEEPING IN MIND THE BOARD'S POLICY AGAINST FRAGMENTATION OF BARGAINING UNITS WHICH PRECLUDES THE OMISSION OF THE CASUAL AND TEMPORARY EMPLOYEES FROM THE BARGAINING UNIT SOUGHT, AND HAVING REGARD TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT EXECUTIVE OFFICERS, BUYERS, SALESMEN, OFFICE AND CLERICAL STAFF, INCLUDING ALL IN THE SUPERINTENDENT'S OFFICE AND TIME OFFICE, SUPERINTENDENTS, CHIEF ENGINEER, FOREMEN, CHEMICAL LABORATORY WORKERS AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

15. IN VIEW OF THE FACT THAT THE BARGAINING UNIT FOUND BY THE BOARD TO BE APPROPRIATE IS DIFFERENT TO THAT PROPOSED BY THE PARTIES, THE LISTS OF EMPLOYEES SUPPLIED BY THE RESPONDENT IN RESPONSE TO THE APPLICATION, MAY OR MAY NOT ACCURATELY REFLECT THE REQUIRED INFORMATION RELATIVE TO THE UNIT FOUND BY THE BOARD TO BE APPROPRIATE. UNLESS THE BOARD RECEIVES, NOT LATER THAN DECEMBER 30TH, 1966, NEW LISTS, REFERRABLE TO THE DATE OF APPLICATION HEREIN, IT WILL DISPOSE OF THE MATTER WITHOUT FURTHER REFERENCE TO THE PARTIES, ON THE ASSUMPTION THAT THE LISTS NOW ON FILE ARE CORRECT AS OF THE DATE OF APPLICATION FOR CERTIFICATION WITH RESPECT TO THE BARGAINING UNIT HEREIN SET OUT.

DECISION OF BOARD MEMBER J. E. C. ROBINSON:

DECEMBER 20, 1966.

I DISSENT.

IN VIEW OF THE PHYSICAL SET-UP OF ARTICLE III OF THE SUBSISTING COLLECTIVE AGREEMENT AND THE PHRASEOLOGY CONTAINED THEREIN, I WOULD HAVE

FOUND THAT ALL EMPLOYEES OF THE RESPONDENT, SAVE THE SPECIFIC EXCEPTIONS CONTAINED IN ARTICLE III, SECTION 1., WERE ALREADY COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT. ACCORDINGLY, I WOULD HAVE DISMISSED THE PRESENT APPLICATION.

12359-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669 (APPLICANT) v. L. FORTIN CONSTRUCTION (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: DECEMBER 1, 1966.

1. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES ON THE REPORT OF THE EXAMINER, DATED NOVEMBER 15, 1966.
2. EXAMINATIONS ARE NORMALLY CONDUCTED ON AN EMPLOYER'S PREMISES DURING WORKING HOURS SO AS TO CAUSE AS LITTLE INCONVENIENCE AS POSSIBLE TO ALL PERSONS CONCERNED WITH THE INQUIRY. IN THE PRESENT CASE THE EMPLOYER'S PREMISES WERE NOT SUITABLE FOR AN INQUIRY. HOWEVER, THE SITE SELECTED FOR THE EXAMINATION CLEARLY CARRIED OUT THE PRINCIPLE OF MUTUAL ACCOMMODATION. IF THE APPLICANT HAD ANY OBJECTIONS TO THE SITE IT SHOULD HAVE VOICED THEM PRIOR TO THE COMMENCEMENT OF THE EXAMINATION AND NOT AFTER THE INQUIRY WAS COMPLETED.
3. IT WOULD BE IMPOSSIBLE FOR THE BOARD TO FINISH AN INQUIRY ALREADY COMMENCED BY AN EXAMINER. THE ONLY COURSE OPEN TO THE BOARD WOULD BE TO HEAR THE WITNESSES ALL OVER AGAIN AND THIS WE ARE NOT PREPARED TO DO IN THE CIRCUMSTANCES OF THIS CASE. FURTHERMORE, THE REPORT OF THE EXAMINER, ON ITS FACE, DOES NOT APPEAR TO RAISE ANY QUESTION OF CREDIBILITY OF WITNESSES SO AS TO BRING THE MATTER WITHIN THE PRINCIPLES SET OUT IN THE BARLIN-SCOTT MANUFACTURING COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1964, P. 595. IT SHOULD PERHAPS BE POINTED OUT THAT EXAMINERS ARE NOT EMPOWERED BY THE BOARD TO ADMINISTER OATHS.
4. IT SEEMS CLEAR THAT THE APPLICANT WAS NOT IN A POSITION TO COMPLETE ITS CASE BY REASON OF THE LOSS OF A DAY DUE TO WEATHER CONDITIONS AND BECAUSE OF THE NON-APPEARANCE OF WITNESSES. WHILE WE AGREE THAT PARAGRAPH 8 OF PRACTICE NOTE #4 HAS NO APPLICABILITY TO THE FACTS OF THIS CASE, IN OUR VIEW THE APPLICANT IS ENTITLED TO CALL BOUCHARD AND SUCH OTHER PERSONS AS IT MAY SEE FIT, PROVIDED THEIR TESTIMONY IS MATERIAL TO THE ISSUES BEFORE THE EXAMINER. IN THIS REGARD WE POINT OUT THAT THE BOARD IS CONCERNED WITH WHAT THE PERSONS IN DISPUTE WERE DOING WHILE EMPLOYED BY THE RESPONDENT AND NOT WHAT THEY WERE DOING FOR SOME PREVIOUS EMPLOYER. FURTHER, IT IS NOT OPEN TO THE APPLICANT TO RECALL WITNESSES WHO HAVE ALREADY TESTIFIED ON ITS BEHALF. THIS COULD ONLY BE DONE BY WAY OF REPLY EVIDENCE TO EVIDENCE CALLED BY THE RESPONDENT AND WOULD, OF COURSE, BE EVIDENCE OF A RESTRICTED NATURE. HOWEVER, IT IS OPEN TO THE APPLICANT TO

RECALL LABERGE TO GIVE TESTIMONY RESPECTING LUC FORTIN IF IT SO DESIRES, SINCE IT WOULD APPEAR THAT FORTIN DID NOT TESTIFY UNTIL AFTER LABERGE HAD BEEN CALLED AND, FURTHER, THAT THIS WAS OCCASIONED BY A DESIRE TO EXPEDITE THE PROCEEDINGS. LABERGE'S EVIDENCE, IF ANY, WOULD BE LIMITED TO EVIDENCE CONCERNING FORTIN.

5. THE EXAMINER IS DIRECTED TO CONTINUE HIS EXAMINATION IN ACCORDANCE WITH THE PRINCIPLES SET OUT ABOVE.

12369-66-R: UNITED GARMENT WORKERS OF AMERICA LOCAL #253 (APPLICANT) V. WEATHERCRAFT SPORTSWEAR LTD. CARRYING ON BUSINESS UNDER THE NAME, STYLE OR FIRM OF CANADA SPORTSWEAR CO. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
D. W. FORGIE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND M. SUSSHOLZ FOR THE APPLICANT, W. S. COOK, I. BORENSTEIN AND C. GOLDFINGER FOR THE RESPONDENT, JOHN EWANIUK FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER D. W. FORGIE:

DECEMBER 20, 1966.

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2. ON OCTOBER 24TH, 1966, THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT AND THE TERMINAL DATE FOR THIS APPLICATION WAS FIXED AS OCTOBER 31ST, 1966.

3. THERE WAS FILED IN THIS MATTER A DOCUMENT WHICH PURPORTED TO BE A STATEMENT OF OBJECTIONS TO THE CERTIFICATION OF THE APPLICANT SIGNED BY 24 PERSONS, 23 OF WHOM WERE EMPLOYEES INCLUDED ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. THE DOCUMENT WAS SENT TO THE BOARD BY REGISTERED MAIL ON OCTOBER 31ST, THE TERMINAL DATE OF THIS APPLICATION. PURSUANT TO THE PROVISIONS OF SECTION 50(1)(B) OF THE BOARD'S RULES OF PROCEDURE IT WAS DEEMED TO HAVE BEEN RECEIVED BY THE BOARD ON OCTOBER 31ST, 1966.

4. THE MANNER IN WHICH THE DOCUMENT WAS SET UP IS WORTHY OF NOTE. ALL OF THE SIGNATURES APPEARED IN A COLUMN STARTING AT THE TOP LEFT HAND SIDE OF THE PAGE. ON THE RIGHT HALF OF THE PAGE OPPOSITE THE FIRST TWO SIGNATURES APPEAR THE FOLLOWING TEXT: "WE ARE SIGNED BECAUSE WE DONT WONDET BELONG TO THE UNION" [SIC].

5. THE STATEMENT OF OBJECTIONS WAS NOT ACCOMPANIED BY THE NAME OF THE EMPLOYER AS REQUIRED BY SECTION 48 OF THE BOARD'S RULES OF PROCEDURE AND THE REGISTRAR RETURNED THE STATEMENT TO THE PERSON WHOSE NAME AND ADDRESS APPEARED ON THE ENVELOPE IN WHICH THE STATEMENT OF OBJECTIONS HAD BEEN MAILED TO THE BOARD. PRIOR TO RETURNING THE STATEMENT OF OBJECTIONS THE

BOARD AFFIXED ITS DATE STAMP, SHOWING THE DATE THE DOCUMENT WAS RECEIVED BY THE BOARD, IN SUCH A MANNER AS TO PREVENT ADDITIONAL NAMES BEING ADDED TO THE DOCUMENT WITHOUT THE BOARD'S KNOWLEDGE. THE REGISTRAR'S LETTER DATED NOVEMBER 1ST, 1966 RETURNING THE DOCUMENT READS AS FOLLOWS:

I AM RETURNING HERewith A HANDWRITTEN UNDATED STATEMENT OF DESIRE BEARING THE SIGNATURE OF YOURSELF AND 23 OTHER PERSONS. THE BOARD IS UNABLE TO TAKE ANY ACTION WITH RESPECT TO THIS STATEMENT AS IT DOES NOT INDICATE THE NAME OF THE EMPLOYER.

YOUR ATTENTION IN THIS REGARD IS DIRECTED TO SECTION 48 OF THE BOARD'S RULES OF PROCEDURE, A COPY OF WHICH IS ENCLOSED HERewith, TOGETHER WITH A COPY OF THE LABOUR RELATIONS ACT.

6. THE DOCUMENT WAS RETURNED TO THE BOARD AGAIN BY REGISTERED MAIL ON NOVEMBER 2ND, 1966 AND THE FOLLOWING ADDITIONAL INFORMATION APPEARED ON THE DOCUMENT: "CANADA SPORTSWEAR
364 RICHMOND ST. W."

WITH THIS ADDITIONAL INFORMATION THE BOARD WAS ABLE TO RELATE THE DOCUMENT TO THIS FILE.

7. THE APPLICANT WAS APPRISED OF THE FACTS THAT THE BOARD HAD RECEIVED THE DOCUMENT WHICH WAS SENT BACK TO THE OBJECTOR AND WAS RETURNED TO THE BOARD WITH THE NAME OF THE EMPLOYER ENDORSED THEREON. THIS INFORMATION WAS SENT TO THE APPLICANT BY THE BOARD ON NOVEMBER 3RD, 1966. AT THE HEARING THE APPLICANT ADVISED THE BOARD THAT IT HAD RECEIVED NOTICE OF THE DOCUMENT AND THE MANNER IN WHICH IT HAD BEEN FILED, FROM THE BOARD ON FRIDAY, NOVEMBER 4TH, 1966. THIS MATTER WAS HEARD BY THE BOARD ON MONDAY, NOVEMBER 7TH, 1966.

8. THE APPLICANT OBJECTED TO THE MANNER IN WHICH THE DOCUMENT WAS FILED AND ARGUED THAT BECAUSE IT DID NOT COMPLY WITH THE PROVISIONS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE WHEN IT WAS FIRST FILED ON THE TERMINAL DATE, THE BOARD SHOULD NOT ENTERTAIN THE OBJECTIONS OF THE EMPLOYEES AT THIS TIME. THE APPLICANT ARGUED THAT A STATEMENT OF OBJECTIONS FILED BY EMPLOYEES MUST MEET THE FIVE REQUIREMENTS OF SECTION 48. THESE REQUIREMENTS ARE:

1. THE STATEMENT OF OBJECTIONS MUST BE IN WRITING;
2. THE STATEMENT OF OBJECTIONS MUST BE SIGNED BY THE EMPLOYEE OR EACH MEMBER OF THE GROUP OF EMPLOYEES;
3. THE STATEMENT OF OBJECTIONS MUST BE ACCOMPANIED BY THE RETURN MAILING ADDRESS OF THE PERSON WHO FILED THE OBJECTIONS;

4. THE STATEMENT OF OBJECTIONS MUST BE ACCOMPANIED BY THE NAME OF THE EMPLOYER; AND

5. THE STATEMENT OF OBJECTIONS MUST BE FILED NOT LATER THAN THE TERMINAL DATE OF THE APPLICATION.

9. IT WAS THE APPLICANT'S POSITION THAT THE FIRST FOUR REQUIREMENTS WERE NOT SEVERABLE AND ACCORDINGLY MUST ALL BE FULFILLED NOT LATER THAN THE TERMINAL DATE OF THE APPLICATION. SINCE THE FOURTH REQUIREMENT WAS NOT FULFILLED ON OR BEFORE THE TERMINAL DATE OF THE APPLICATION THE APPLICANT MOVED THAT THE STATEMENT OF OBJECTIONS BE DISMISSED. THE BOARD RESERVED ITS DECISION ON THE APPLICANT'S MOTION AND THE APPLICANT HAVING WAIVED ITS REQUEST FOR AN ADJOURNMENT THE BOARD HEARD THE EVIDENCE CONCERNING THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENT SUBJECT TO ITS DECISION ON THE APPLICANT'S MOTION.

10. ALL FIVE REQUIREMENTS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE WERE SUBSTANTIALLY SATISFIED PRIOR TO THE HEARING IN THIS MATTER.

11. WHILE SECTION 48 OF THE BOARD'S RULES OF PROCEDURE APPEARS TO CONTEMPLATE THAT THE STATEMENT OF OBJECTIONS (WHICH MUST BE FILED NOT LATER THAN THE TERMINAL DATE OF THE APPLICATION) BE ACCOMPANIED BY THE NAME OF THE EMPLOYER, SUCH REQUIREMENT IS A PROCEDURAL REQUIREMENT. IT IS READILY APPARENT THAT THE BOARD WOULD BE UNABLE TO PROCESS THE STATEMENT OF OBJECTIONS WITHOUT THE NAME OF THE EMPLOYER BECAUSE THE BOARD WOULD NOT KNOW WHICH APPLICATION WAS BEING OBJECTED TO BY THE EMPLOYEES. THE BOARD IS OF OPINION THAT THIS REQUIREMENT, WHILE ESSENTIAL TO THE PROMPT PROCESSING OF THE STATEMENT OF OBJECTIONS, IS A TECHNICAL REQUIREMENT WHICH CAN BE RELIEVED AGAINST WITHOUT SERIOUSLY PREJUDICING THE POSITION OF THE OTHER PARTIES IF, AS IN THIS CASE, THE PETITIONER ACTS PROMPTLY TO REMEDY THE DEFECT. THE INFORMATION CONCERNING THE NAME OF THE EMPLOYER SHOULD BE FILED WITH THE STATEMENT OF OBJECTIONS, HOWEVER, IF THE ONLY DEFECT IN THE STATEMENT OF OBJECTIONS IS THE ABSENCE OF THE EMPLOYER'S NAME, SUCH DEFECT MAY BE REMEDIED PURSUANT TO THE PROVISIONS OF SECTION 86 OF THE ACT BY PERMITTING THE NAME TO BE FILED AFTER THE TERMINAL DATE WITHOUT IN ANY WAY AFFECTING THE MERITS OF THE OBJECTIONS. THE ABSENCE OF THE NAME OF THE EMPLOYER DOES NOT GO TO THE MERITS OF THE STATEMENT OF OBJECTIONS.

12. ANOTHER EXAMPLE OF AN INSTANCE WHERE STRICT COMPLIANCE WITH THE PROVISIONS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE WOULD NOT BE INSISTED UPON WOULD BE THE SITUATION WHERE THE EMPLOYEES' STATEMENT OF OBJECTIONS REFER TO THE BOARD'S FILE NUMBER RATHER THAN THE NAME OF THE EMPLOYER. WHERE REFERENCE IS MADE TO THE BOARD'S FILE NUMBER IN A PARTICULAR MATTER IT WOULD BE ABSURD TO INSIST THAT BECAUSE THE STATEMENT OF OBJECTIONS WAS NOT ACCOMPANIED BY THE NAME OF THE EMPLOYER THE STATEMENT OF OBJECTIONS SHOULD NOT BE ENTERTAINED. SINCE THE ONLY PURPOSE FOR THE REQUIREMENT THAT THE STATEMENT OF OBJECTIONS BE ACCOMPANIED BY THE

NAME OF THE EMPLOYER IS TO PERMIT THE STATEMENT OF OBJECTIONS TO BE REFERRED TO THE PROPER MATTER PENDING BEFORE THE BOARD, REFERENCE TO THE BOARD'S FILE NUMBER WOULD SERVE THIS PURPOSE WITH PERFECT CLARITY.

13. ON THE EVIDENCE BEFORE US IN THIS CASE WE FIND THAT THE OMISSION OF THE NAME OF THE EMPLOYER WAS AN OVERSIGHT ON THE PART OF THE EMPLOYEE WHO SUBMITTED THE STATEMENT OF OBJECTIONS AND WAS REMEDIED IMMEDIATELY UPON THE DEFECT BEING BROUGHT TO HIS ATTENTION. THE BOARD IS SATISFIED THAT THERE WAS NO INTENTION ON THE PART OF THE OBJECTORS TO DELAY THE PROCEEDINGS OR IN ANY WAY HAMPER THE DUE PROCESSING OF THIS APPLICATION BY DELIBERATELY SUBMITTING A DEFECTIVE STATEMENT OF OBJECTIONS.

14. HAVING REGARD, THEREFORE, TO THE PROVISIONS OF SECTION 86 OF THE ACT AND SECTIONS 57(2) AND 59 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD FINDS THAT THERE IS NO PROPER REASON TO REFUSE TO ENTERTAIN THE STATEMENT OF OBJECTIONS IN THE CIRCUMSTANCES OF THIS CASE AND TO DETERMINE THE MATTER ON ITS MERITS. THE APPLICANT'S MOTION IS THEREFORE DISMISSED.

15. DEALING NEXT WITH THE MERITS OF THE PETITION, JOHN EWANIUK, AN EMPLOYEE OF THE RESPONDENT, TESTIFIED THAT HE HAD WRITTEN THE HEADING ON THE PETITION WHILE IN A RESTAURANT LOCATED NEAR THE RESPONDENT'S PREMISES. HE FURTHER STATED THAT HE HAD WITNESSED ALL 24 SIGNATURES WHICH APPEARED ON THE DOCUMENT. HE TESTIFIED THAT SIGNATURES NOS. 17, 18 AND 21 HAD BEEN WITNESSED BY HIM WHEN THE PERSONS SIGNED ON THE STREET NEAR THE RESPONDENT'S PREMISES AND THAT ANOTHER PERSON BY THE NAME OF "TONY" WHOSE LAST NAME HE COULD NOT REMEMBER AND WHOSE SIGNATURE HE COULD NOT IDENTIFY ALSO SIGNED THE DOCUMENT WHILE ON THE STREET. MR. EWANIUK FURTHER TESTIFIED THAT ALL THE OTHER 20 SIGNATURES WERE SIGNED IN HIS PRESENCE IN THE RESTAURANT.

16. BEFORE THE DOCUMENT WAS PREPARED, MR. BORENSTEIN AND MR. GOLDFINGER, THE TWO PRINCIPALS OF THE RESPONDENT, APPROACHED MR. EWANIUK AT HIS WORK STATION AND ADVISED HIM THEY HAD RECEIVED THE APPLICATION FOR CERTIFICATION. THEY TOLD HIM THAT THEY DID NOT WANT THE UNION TO COME INTO THEIR PLANT AND EXPRESSED THEIR OPINION OF THE UNION. DURING THE COURSE OF THIS CONVERSATION CERTAIN UNION SHOPS WERE DISCUSSED AND IT WAS ALLEGED THAT SUCH SHOPS ONLY WORKED SEVEN OR EIGHT MONTHS OF THE YEAR WHEREAS THE RESPONDENT OPERATED FOR FIFTY-TWO WEEKS OF THE YEAR. MR. EWANIUK STATED HE HAD PERSONAL KNOWLEDGE CONCERNING THE UNION SHOPS. IN CONNECTION WITH THE LAYOFFS IN THE UNION SHOPS ONE OF THE RESPONDENT'S PRINCIPALS THEN STATED THAT "IF I HAVE TO JACK UP THE PRICES I CANNOT GUARANTEE THAT I WILL HAVE STEADY WORK". APART FROM THE STATEMENT REFERRED TO ABOVE, MR. EWANIUK COULD NOT RECALL ANY OTHER SPECIFIC STATEMENT MADE BY EITHER MR. BORENSTEIN OR MR. GOLDFINGER.

17. MR. EWANIUK TESTIFIED THAT ON THE DAY FOLLOWING HIS CONVERSATION WITH MR. BORENSTEIN AND MR. GOLDFINGER HE LEFT WORK AT 4:00 P.M. AND WENT TO THE RESTAURANT WHERE HE STATED HE PREPARED THE PETITION AFTER DISCUSSING THE MATTER WITH ANOTHER EMPLOYEE. MR. EWANIUK TESTIFIED THAT HE TOLD MR. GOLDFINGER THAT HE WAS LEAVING WORK AT 4:00 O'CLOCK FOR A CUP

OF COFFEE. HE DID NOT RETURN TO WORK UNTIL 6:00 O'CLOCK THAT EVENING. APPARENTLY, HIS USUAL WORK DAY ENDS BETWEEN SEVEN AND EIGHT O'CLOCK IN THE EVENING. MR. EWANIUK TESTIFIED THAT THE TEXT ON THE DOCUMENT WAS PLACED THERE PRIOR TO ANY PERSON SIGNING THE DOCUMENT. ANOTHER EMPLOYEE DIRECTED EMPLOYEES OF THE RESPONDENT TO THE RESTAURANT WHERE, ACCORDING TO THE TESTIMONY, THEY SIGNED THE PETITION.

18. ON QUESTIONS PUT TO MR. EWANIUK BY THE BOARD AT THE REQUEST OF THE APPLICANT IN AN ATTEMPT TO ASCERTAIN WHEN SPECIFIC SIGNATURES WERE PLACED ON THE DOCUMENT, IT DEVELOPED THAT IN ADDITION TO THE FOUR PERSONS ORIGINALLY MENTIONED BY MR. EWANIUK SOME THREE OR FOUR OTHER PERSONS ALSO SIGNED AT A PLACE OTHER THAN THE RESTAURANT. AT LEAST ONE OF THE OTHER PERSONS SIGNED IN THE GROUND FLOOR HALLWAY OF THE BUILDING WHERE THE RESPONDENT'S PREMISES ARE LOCATED AND AT LEAST TWO ADDITIONAL PERSONS SIGNED ON THE STREET OUTSIDE THE RESPONDENT'S PREMISES. MR. EWANIUK TOOK A TOTAL OF FIVE HOURS OFF WORK TO OBTAIN THE SIGNATURES ON THE PETITION. WHILE MR. EWANIUK DISCLAIMED HAVING RECEIVED PAY FOR THE PERIOD HE TOOK OFF WORK, APPARENTLY NO OBJECTION TO HIS ABSENCE WAS MADE BY THE RESPONDENT. AFTER OBTAINING 14 OR 15 OF THE SIGNATURES MR. EWANIUK SHOWED THE PETITION WITH THE SIGNATURES ON IT TO MR. BORENSTEIN AT HIS WORK STATION WITHIN SIGHT OF OTHER EMPLOYEES. WHEN ASKED WHY HE SHOWED THE DOCUMENT TO MR. BORENSTEIN HE STATED THAT HE SHOWED IT TO HIM TO "CHEER UP MR. BORENSTEIN". ON ANOTHER OCCASION WHEN HE ATTEMPTED TO DISCUSS THE MATTER WITH MR. BORENSTEIN, MR. BORENSTEIN STOPPED HIM AND STATED THAT "HIS ATTORNEY TOLD HIM NOT TO TALK TO ME".

19. AFTER ALL THE SIGNATURES WERE OBTAINED ON THE DOCUMENT MR. EWANIUK TOOK THE DOCUMENT AND MAILED IT FROM THE POST OFFICE AT UNION STATION IN TORONTO AT 7:30 P.M. ON OCTOBER 31ST, 1966. WHEN THE DOCUMENT WAS RETURNED TO HIM BY THE BOARD HE STATED THAT HE TOOK THE DOCUMENT TO THE SPADINA AVENUE POST OFFICE WHERE HE PURCHASED THE NECESSARY STAMPS, AFFIXED THEM TO THE ENVELOPE CONTAINING THE DOCUMENT AND SENT THEM TO THE BOARD BY REGISTERED MAIL, SPECIAL DELIVERY. HIS ATTENDANCE AT THE SPADINA AVENUE POST OFFICE AGAIN REQUIRED THAT HE ABSENT HIMSELF FROM WORK AND ON HIS RETURN TO WORK HE ADVISED MR. GOLDFINGER THAT HE HAD FAILED TO INCLUDE THE NAME OF THE EMPLOYER ON THE PETITION WHEN IT WAS FIRST PREPARED AND THAT HE HAD TO MAIL A SECOND LETTER.

20. HAVING REGARD TO ALL THE EVIDENCE AND HAVING TAKEN INTO CONSIDERATION THE DISCREPANCIES IN THE EVIDENCE OF MR. EWANIUK AND HAVING ASSESSED HIS CREDIBILITY IN LIGHT OF HIS EVIDENCE AND THE MANNER IN WHICH HE TESTIFIED, THE BOARD FINDS THAT IT WAS ONLY AFTER A DISCUSSION WITH MEMBERS OF MANAGEMENT THAT MR. EWANIUK PREPARED THE DOCUMENT IN OPPOSITION TO THIS APPLICATION. THE STATEMENT MADE BY MANAGEMENT CONCERNING MANAGEMENT'S INABILITY TO GUARANTEE WORK IN THE CONTEXT IN WHICH IT WAS MADE RELATING TO LAYOFFS IN UNIONIZED PLANTS, WAS INTENDED TO, AND WAS LIKELY TO HAVE HAD,

EFFECT OF INTIMIDATING MR. EWANIUK. THIS INTIMIDATION LED TO THE ORIGINATION OF THE DOCUMENT FILED IN OPPOSITION TO THIS APPLICATION. IN ADDITION, WHEN ASKED WHY HE SHOWED THE DOCUMENT TO MR. BORENSTEIN HE STATED HE WANTED TO "CHEER UP MR. BORENSTEIN". THIS STATEMENT IS CONSISTENT WITH THE FACT THAT HE HAD PREPARED THE DOCUMENT AND WAS CIRCULATING THE DOCUMENT FOR SIGNATURES NOT IN PROMOTION OF HIS OWN INTEREST, BUT ON BEHALF OF AND FOR THE BENEFIT OF THE RESPONDENT COMPANY. IT IS NOT UNREASONABLE TO ASSUME THAT EMPLOYEES WOULD BE INFLUENCED BY THE FACT THAT MR. EWANIUK WAS ABLE TO TAKE OFF SOME FIVE HOURS FROM HIS WORK WITH MANAGEMENT'S TACIT APPROVAL TO OBTAIN SIGNATURES AND WAS OPENLY DISCLOSING THE SIGNATURES TO MANAGEMENT.

21. HAVING REGARD, THEREFORE, TO ALL THE CIRCUMSTANCES WHICH LED UP TO THE ORIGINATION AND WHICH SURROUNDED THE CIRCULATION OF THE DOCUMENT SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

22. THE BOARD FURTHER FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

23. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, AND OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

24. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

25. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

26. HAVING HAD AN OPPORTUNITY TO READ THE DISSENT OF BOARD MEMBER ROBINSON, WE FIND IT NECESSARY TO MAKE THE FOLLOWING OBSERVATIONS. THE BOARD HAS HAD EXPERIENCE OVER MANY YEARS WITH SITUATIONS WHERE CHARGES OF UNFAIR CONDUCT ARE MADE BY A PARTY PRIOR TO A HEARING AND ARE WITHDRAWN AT THE HEARING BEFORE ANY EVIDENCE IS CALLED IN SUPPORT OF THE ALLEGATIONS. SUCH WITHDRAWAL MAY BE FOR A HOST OF REASONS, SUCH AS FOR THE PURPOSE OF AVOIDING AN ADJOURNMENT, OR THE WITHDRAWAL MAY HAVE BEEN NECESSITATED BY LACK OF EVIDENCE OR THE FACT THAT THE CHARGES HAD PROVED TO BE WITHOUT SUBSTANCE AFTER INVESTIGATION. HOWEVER, ONE OF THE MOST IMPORTANT FACTORS WHICH, IN THE BOARD'S EXPERIENCE, PRECIPITATES THE WITHDRAWAL OF CHARGES IS THE REALIZATION BY THE PARTY THAT TO ADDUCE EVIDENCE IN SUPPORT OF THE CHARGES WILL ONLY SERVE TO MUDDY THE WATERS OF AN ANTICIPATED BARGAINING

RELATIONSHIP WHERE THE PARTY IS CONFIDENT THAT IT WILL SUCCEED WITHOUT CALLING SUCH EVIDENCE. THE BOARD INVARIABLY TAKES NO NOTICE OF THE CHARGES WHERE THEY HAVE BEEN WITHDRAWN AND ATTACHES NO WEIGHT TO THE FACT THAT ALLEGATIONS HAD BEEN MADE OR WITHDRAWN. THE ALLEGATIONS ARE A FORM OF PLEADING BUT ARE NOT IN THEMSELVES EVIDENCE BEFORE THE BOARD.

27. IT OFTEN HAPPENS THAT EVEN WHERE A PARTY DOES ADDUCE EVIDENCE IN SUPPORT OF ALLEGATIONS OF UNFAIR CONDUCT THAT THE EVIDENCE DOES NOT SUBSTANTIATE THE CHARGES. IN SUCH EVENT, THE ALLEGATIONS THEMSELVES ARE NEVER PERMITTED BY A "BOOT-STRAP" OPERATION TO BOLSTER THE EVIDENCE WHICH IS ADDUCED IN SUPPORT OF THE ALLEGATIONS.

28. WE ARE ACCORDINGLY OF OPINION THAT NO WEIGHT CAN BE ATTACHED TO NOR INFERENCE DRAWN FROM THE FACT THAT ALLEGATIONS OF UNFAIR CONDUCT HAVE BEEN MADE, OR CONVERSELY THAT THE ALLEGATIONS HAVE BEEN WITHDRAWN. TO DO SO WOULD BE CONTRARY TO LONG ESTABLISHED BOARD PRACTICE AND NATURAL JUSTICE.

DECISION OF BOARD MEMBER J. E. C. ROBINSON: DECEMBER 20, 1966.

I WOULD CONCUR WITH THAT PORTION OF THE DECISION WHICH ALLOWS THE GROUP OF EMPLOYEES TO BE HEARD NOTWITHSTANDING THAT THE NAME OF THE RESPONDENT WAS NOT PRESENT ON THE STATEMENT OF DESIRE WHICH WAS FILED PRIOR TO THE TERMINAL DATE.

WITH RESPECT TO THE OTHER PORTION OF THE DECISION, I WOULD DISSENT, AND IT IS IN THAT CONTEXT THAT MY REMARKS HEREINAFTER ARE DIRECTED.

PRIOR TO THE COMMENCEMENT OF THE HEARING, THE SOLICITORS FOR THE APPLICANT SAW FIT TO FORWARD TO THE BOARD DATED THE 4TH DAY OF NOVEMBER, 1966, A TELEGRAM PURPORTING TO OUTLINE CERTAIN CHARGES AGAINST THE COMPANY WITH RESPECT TO THE PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE.

IN A LETTER TO THE BOARD DATED THE SAME DAY, ON THE LETTERHEAD OF THE APPLICANT'S SOLICITORS, THE APPLICANT'S SOLICITORS SAID, INTER ALIA, REFERRING TO THE STATEMENT OF DESIRE:-

"IF THE STATEMENT IS TO BE CONSIDERED, THE APPLICANT WILL DESIRE AN ADJOURNMENT FOR THE PURPOSE OF PROVIDING PARTICULARS OF COMPANY INTERFERENCE IN THE PREPARATION AND CIRCULATION OF THE DOCUMENT."

THE COUNSEL FOR THE APPLICANT MAINTAINED THE POSITION THAT HE DESIRED AN ADJOURNMENT "FOR THE PURPOSE OF PROVIDING PARTICULARS OF COMPANY INTERFERENCE IN THE PREPARATION AND CIRCULATION OF THE DOCUMENT." IT SHOULD BE HERE NOTED THAT HE DID NOT SEEK AN ADJOURNMENT FOR THE PURPOSE OF INVESTIGATING PARTICULARS OF COMPANY INTERFERENCE, BUT MERELY FOR THE PURPOSE OF PROVIDING PARTICULARS.

THE LETTER OF NOVEMBER 4TH, 1966 AND THE TELEGRAM OF THE SAME DATE WERE INTRODUCED BY COUNSEL FOR THE APPLICANT INTO EVIDENCE, ALTHOUGH HE SUBSEQUENTLY WITHDREW ALL CHARGES AGAINST THE RESPONDENT AND WAIVED ANY RIGHT WHICH HE HAD TO AN ADJOURNMENT.

WHILE THE CONTENTS OF THE TELEGRAM IN THE FORM OF CHARGES HAVE NO EVIDENTIARY VALUE TO US IN DECIDING THIS CASE BECAUSE OF THE WITHDRAWAL OF THE CHARGES, AND WHILE I AM SATISFIED THAT MY COLLEAGUES COMPLETELY DIVORCED THEMSELVES FROM THE ALLEGATIONS CONTAINED IN THE TELEGRAM IN REACHING THEIR DECISION, I FEEL COMPELLED TO REFER TO THE VERY INTRODUCTION OF THE LETTER AND THE TELEGRAM AND THE SUBSEQUENT WITHDRAWAL OF CHARGES.

WHILE IN MOST CASES BEFORE THIS BOARD, THE INTRODUCTION OF DOCUMENTS IN THE FORM OF CHARGES, AND THE SUBSEQUENT WITHDRAWAL OF CHARGES WOULD HAVE NO SIGNIFICANCE WHATSOEVER, I FEEL THAT IN THE CIRCUMSTANCES OF THIS CASE, AND RESTRICTING MYSELF TO THE CIRCUMSTANCES OF THIS CASE, SOME COMMENT SHOULD BE MADE THERETO.

FROM MY READING OF THE LETTER TO THE BOARD DATED NOVEMBER 4TH, 1966, I MUST CONCLUDE THAT THE SOLICITORS FOR THE APPLICANT ALLEGED THAT THEY WERE IN POSSESSION OF PARTICULARS FOR WHICH THEY WISHED AN ADJOURNMENT IN ORDER TO PROVIDE SUCH PARTICULARS TO THE BOARD. AM I NOT ALSO ENTITLED TO CONCLUDE (IF, INDEED, A CONCLUSION IS TO BE DRAWN) THAT BY DECLINING TO PROVIDE THE PARTICULARS TO THE BOARD, COUNSEL WHO IS LEARNED AND EXPERIENCED IN THE LABOUR FIELD HAS DECIDED THAT SUCH PARTICULARS DID NOT CONSTITUTE COMPANY INTERFERENCE IN THE PREPARATION AND CIRCULATION OF THE PETITION?

INDEED, IN HIS FINAL ARGUMENT, COUNSEL FOR THE APPLICANT REQUESTED US TO DRAW FROM THE EVIDENCE OF THE SOLE WITNESS HEARD BY THE BOARD, CERTAIN INNUENDOES, INSINUATIONS AND ASSUMPTIONS. I WOULD HAVE BEEN MORE CONTENTED IF HE HAD CALLED DIRECT, AFFIRMATIVE EVIDENCE OF COMPANY INTERFERENCE WHICH HE SUGGESTED HE POSSESSED, THAN TO HAVE HAD TO FORM CERTAIN CONCLUSIONS BASED ON SUCH INNUENDOES, INSINUATIONS AND ASSUMPTIONS.

COUNSEL FOR THE APPLICANT INVITED US TO TAKE NOTE OF THE POSITION OF THE PREAMBLE TO THE PETITION AS IT RELATED TO THE POSITION OF THE SIGNATURES AND INDEED IN THE MAJORITY DECISION, IT WOULD APPEAR THAT SOME NOTE WAS TAKEN OF THE MANNER IN WHICH THE DOCUMENT WAS SET UP. IN ADDITION, COUNSEL FOR THE APPLICANT SUGGESTS THAT BECAUSE OF THE USE OF THE PAST TENSE "SIGNED" IN SUCH PREAMBLE, THAT THE BOARD IS ENTITLED TO DRAW THE INFERENCE THAT THE PREAMBLE WAS ADDED AFTER THE SIGNATURES WERE AFFIXED.

WHILE I APPRECIATE THE ARGUMENT OF COUNSEL, I CANNOT DRAW THE INFERENCES WHICH HE INVITES ME TO MAKE. MR. EWANIUK, THE ONLY PERSON GIVING EVIDENCE ON BEHALF OF THE GROUP OF EMPLOYEES WHO WERE SIGNATORIES TO THE PETITION, ADMITTED THAT HE WAS AN UNEDUCATED MAN, AND INDEED THE VERY WORDING OF THE PREAMBLE TO THE PETITION, I.E., "WE ARE SIGNED BECAUSE WE DONT WONDET BELONG TO THE UNION", WOULD SUGGEST THAT NO

SIGNIFICANCE SHOULD BE PLACED BY THE BOARD TO EITHER THE POSITIONING OF THE PREAMBLE ON THE PETITION OR TO THE USE OF THE WORD "SIGNED" IN SUCH PREAMBLE. BY DOING OTHERWISE, THE BOARD MAY WELL MISINTERPRET THE INABILITY OF A WITNESS TO EXPRESS HIMSELF IN THE ENGLISH LANGUAGE AS LESSENING THE VERACITY OF HIS PRONOUNCEMENTS. LITERACY, OR THE LACK OF IT, DOES NOT, AND SHOULD NOT, PROVIDE ANY CRITERIA IN ASCERTAINING THE TRUTH.

IN TURNING TO THE VIVA VOCE EVIDENCE IN SUPPORT OF THE PETITION, I WOULD FIRSTLY MAKE ONE OBSERVATION. THE SIGNATORIES TO A STATEMENT OF DESIRE, AND THEIR SPOKESMAN, ARE ENTITLED TO STAND AS STRAIGHT AND AS TALL BEFORE THIS BOARD AS DO THE REPRESENTATIVES OF THE UNION OR MANAGEMENT. TO THINK OTHERWISE WOULD BE TO MAKE MOCKERY OF THE BOARD'S PRACTICE.

IN CONSIDERING THE EVIDENCE OF THE SPOKESMAN FOR THE PETITIONERS, THE BOARD MUST REMEMBER THAT HIS EVIDENCE WAS GIVEN UNDER OATH, WITHOUT ANY AFFIRMATIVE EVIDENCE SUBMITTED BY THE OTHER PARTIES TO THE PROCEEDINGS, TO THE CONTRARY.

THE EVIDENCE OF MR. EWANIUK WAS THAT HIS EXPERIENCE WITH UNIONS IN HIS NATIVE LAND, WHICH I UNDERSTOOD TO BE SOME PLACE OTHER THAN IN CANADA, WAS THAT IT WOULD NOT ENABLE WORKERS IN HIS PARTICULAR INDUSTRY TO ENJOY THE BENEFITS OF A FULL WORK YEAR. OF THIS HE WAS CONVINCED, WHETHER RIGHTLY OR WRONGLY, AND FROM THIS CONVICTION, THE PETITION WAS BORN. I AM CONVINCED THEREFORE, AND I WOULD SO FIND, THAT NOTHING THAT WAS SAID TO HIM BY MANAGEMENT INSPIRED THE ORIGINATION OF THE PETITION. NEITHER DO I PLACE THE SAME SIGNIFICANCE TO, NOR THE SAME INTERPRETATION OF, THE WITNESSES' EVIDENCE CONCERNING ANY DISCUSSIONS WHICH HE HAD WITH MEMBERS OF MANAGEMENT WHICH COUNSEL FOR THE APPLICANT REQUESTS ME TO DRAW FROM THE EVIDENCE.

MR. EWANIUK TESTIFIED THAT HE WAS PRESENT AND SAW ALL PERSONS WHO SIGNED THE PETITION DO SO. WHILE HE WAS CERTAIN AS TO WHERE AND WHEN THE FIRST 14 OR 15 SIGNED THE PETITION, HE WAS UNCERTAIN AS TO THE EXACT LOCATIONS OF THE SIGNINGS OF THE LATTER FEW, EXCEPT THAT THEY WERE NOT SIGNED ON THE COMPANY'S PREMISES. OF THIS HE ADVISED THE BOARD INITIALLY, AND IT WAS ONLY WHEN PRESSED FOR AN ANSWER BY THE CHAIRMAN BOTH ON HIS OWN AND BY QUESTIONS DIRECTED BY COUNSEL FOR THE APPLICANT THROUGH THE CHAIRMAN, THAT SOME INCONSISTENCIES AROSE. IT WOULD APPEAR TO ME THAT THE BOARD SHOULD UNDERSTAND THAT WITNESSES UNINFORMED AS TO THE BOARD'S PRACTICE AND PRESUMABLY NEVER BEFORE EXPOSED TO BOARD PROCEDURE WILL MANIFEST CERTAIN INCONSISTENCIES BY TRYING TO ANSWER QUESTIONS, THE ANSWERS TO WHICH THEY HAVE EARLIER INDICATED THEY ARE UNSURE.

I WOULD CONCEDE THAT THERE ARE SEVERAL INCONSISTENCIES IN THE WITNESSES' EVIDENCE BUT I AM OF THE OPINION THAT THEY WERE NOT OF SUCH IMPORT AS TO REQUIRE THE BOARD TO PLACE ANY SIGNIFICANCE IN THEM IN JUDGING THE PETITION AS A WHOLE. INDEED, I MIGHT HAVE BEEN SUSPICIOUS OF THE TESTIMONY OF THE WITNESS IF HE HAD ANSWERED THE QUESTIONS FOR THE APPROXIMATE HOUR THAT HE WAS EXAMINED, WITHOUT ANY SIGN OF INCONSISTENCY

IN HIS EVIDENCE. THE LATTER IS NOT USUALLY THE PATTERN OF HONEST WITNESSES WHO ARE TRYING TO ANSWER QUESTIONS TO THE BEST OF THEIR ABILITY, BUT WHO ARE NOT EXPERIENCED IN SUCH PROCEEDINGS. THIS BOARD SHOULD ALWAYS BE COGNIZANT OF THE FACT THAT HONEST WITNESSES MAKE HONEST MISTAKES.

AFTER COLLECTING SOME 14 OR 15 SIGNATURES ON THE PETITION, MR. EWANIUK TESTIFIED THAT HE SHOWED THE PETITION TO MR. BORENSTEIN, A MEMBER OF MANAGEMENT, AT HIS WORK STATION. HE STATED THAT IT WAS SHOWN "TO CHEER HIM UP". HE ALSO SAID, HOWEVER, THAT AT THE TIME THE PETITION WAS SHOWN TO MR. BORENSTEIN, OTHER EMPLOYEES COULD NOT SEE HIM DO SO. THIS LATTER PIECE OF EVIDENCE, WHILE IT MIGHT BE DAMAGING IN OTHER CASES UNDER DIFFERENT CIRCUMSTANCES, SHOULD NOT, IN ITSELF BE FATAL, TO THIS PETITION. IT WAS GIVEN TO THE BOARD OPENLY, FRANKLY AND WITHOUT SUGGESTION OF EVASIVENESS, EVEN THOUGH IT MIGHT BE CONSIDERED AN ADMISSION AGAINST INTEREST. IN MY OPINION, THE FRANKNESS WHICH HE EXHIBITED THROUGHOUT HIS TESTIMONY TOGETHER WITH HIS AFFIRMATIVE EVIDENCE BEHOOVES ME TO BE FAIRLY DISPOSED TO THE TRUTHFULNESS OF ALL OF HIS TESTIMONY. IT SHOULD ALSO BE NOTED THAT OF THE FIRST 14 OR 15 SIGNATORIES TO THE PETITION, AS HEREIN-BEFORE MENTIONED, THERE WERE SUFFICIENT PERSONS WHO ALLEGEDLY JOINED THE UNION AS WELL AS SIGNING THE PETITION TO FORCE A REPRESENTATION VOTE IF THE PETITION WAS HELD TO BE A FREE EXPRESSION OF OPPOSITION TO THE UNION BY THIS BOARD.

IN ARGUMENT, THE BOARD HAS BEEN ASKED TO ATTACH SIGNIFICANCE UPON THE FACT THAT THE WITNESS TOOK IN ALL SOME 4 $\frac{1}{2}$ TO 5 HOURS OFF WORK FOR THE PURPOSE OF OBTAINING SIGNATURES ON THE PETITION. I WOULD NOT PLACE SUCH SIGNIFICANCE UPON SUCH LOST TIME. THE EVIDENCE OF MR. EWANIUK WAS TO THE EFFECT THAT EMPLOYEES OFTEN TOOK TIME OFF WORK AND INDEED HE HIMSELF DID NOT WORK ON A RIGID OR UNIFORM TIME SCHEDULE. WHEN ASKED WHEN HE FINISHED WORK DURING A DAY HE ANSWERED "SIX OR SEVEN" BUT HE ALSO INDICATED THAT BOTH HE AND OTHER EMPLOYEES SOMETIMES WORKED UNTIL EIGHT OR NINE. HE ALSO STATED THAT MANY OF THE EMPLOYEES CEASED WORKING AT 4:00 P.M. AND I UNDERSTAND FROM HIS EVIDENCE THAT IT WAS MANY OF THE LATTER EMPLOYEES WHO INITIALLY SIGNED THE PETITION. IT SHOULD ALSO BE HERE MENTIONED THAT AS A RESULT OF TAKING OFF SUCH TIME, HE LOST THE SUM OF \$12.50 FROM HIS WEEKLY WAGES.

IN CONCLUSION, AFTER HAVING VIEWED MR. EWANIUK AND THE MANNER IN WHICH HE GAVE HIS EVIDENCE, AS WELL AS THE CONTENT OF THE EVIDENCE ITSELF, I WOULD HAVE FOUND THAT HE WAS A CREDIBLE WITNESS. AS A CONSEQUENCE THEREOF, I AM NOT PREPARED TO ACCEPT THE INVITATION OF COUNSEL FOR THE APPLICANT TO BE SUSPECT OF HIS EVIDENCE AND TO BASE MY DECISION UPON THE CONJECTURE WHICH FLOWS FROM SUCH SUSPICION. IF I HAD BEEN CONVINCED OF HIS LACK OF CREDIBILITY, I WOULD HAVE COME TO A DIFFERENT CONCLUSION.

ACCORDINGLY, I WOULD HAVE FOUND ON THE EVIDENCE THAT THE PETITION WAS VOLUNTARILY SIGNED BY THE EMPLOYEES, THAT IT REPRESENTED THEIR TRUE WISHES, AND THAT THERE WAS NO EMPLOYER PARTICIPATION IN SUPPORT OF THE PETITION.

IN ALL THE CIRCUMSTANCES OF THE CASE, AND HAVING CONSIDERED THE REPRESENTATIONS OF COUNSEL AND THE EVIDENCE OF THE PETITIONER, I WOULD HAVE ORDERED A REPRESENTATION VOTE IN ORDER THAT THE EMPLOYEES COULD INDICATE THEIR TRUE WISHES BY SECRET BALLOT. THE EMPLOYEES WOULD BE ASKED IF THEY WISHED TO BARGAIN COLLECTIVELY WITH THEIR EMPLOYER THROUGH THE APPLICANT UNION.

12413-66-R: UNITED EMPLOYEES OF BORG FABRICS LIMITED (APPLICANT) V. BORG FABRICS LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: G. E. CRAIG, J. MAYNE, H. ELLEN AND M. PATTISON FOR THE APPLICANT, S. R. ELLIS AND H. A. PIPPY FOR THE RESPONDENT.

DECISION OF J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBER D. B. ARCHER:
DECEMBER 23, 1966.

. . .

4. SINCE THE APPLICANT HAD NOT PREVIOUSLY MADE APPLICATION FOR CERTIFICATION IT WAS CALLED UPON BY THE BOARD TO ADDUCE EVIDENCE TO ESTABLISH ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

5. AT THE FIRST ORGANIZATION MEETING, WHICH WAS ATTENDED BY THE EMPLOYEES OF THE RESPONDENT, APPROVAL WAS GIVEN IN PRINCIPLE TO THE FORMATION OF AN ASSOCIATION FOR THE PURPOSE OF REPRESENTING THE EMPLOYEES IN THEIR DEALINGS WITH THE RESPONDENT. AT THAT MEETING THE EMPLOYEES ELECTED AN EXECUTIVE CONSISTING OF A PRESIDENT, VICE-PRESIDENT, SECRETARY-TREASURER AND STEWARDS. ACTING ON INSTRUCTIONS FROM THE EMPLOYEES THE EXECUTIVE THEREAFTER DREW UP A DRAFT CONSTITUTION WHICH WAS PRESENTED TO THE EMPLOYEES AT A SECOND MEETING. AT THAT MEETING CERTAIN SUGGESTED CHANGES AND AMENDMENTS WERE MADE WHICH WERE INCORPORATED INTO THE CONSTITUTION AT ANOTHER MEETING OF THE EXECUTIVE. AT A THIRD MEETING OF THE EMPLOYEES THE REVISED CONSTITUTION WAS ADOPTED.

6. HANS ELLEN, THE SECRETARY-TREASURER ELECTED AT THE ORIGINAL MEETING, THEREUPON ATTENDED AT THE OFFICES OF A SOLICITOR WHO PREPARED A FOUR-PAGE DOCUMENT. THE HEADING ON THE FIRST PAGE OF THE DOCUMENT READS AS FOLLOWS:

WE THE UNDERSIGNED ALL EMPLOYEES OF BORG
FABRICS LIMITED, ELMIRA, ONTARIO, DO HEREBY
REQUEST AND ACCEPT MEMBERSHIP IN THE UNITED
EMPLOYEES OF BORG FABRICS LIMITED UNION AND

WE FURTHER OF OUR OWN FREE WILL AUTHORIZE THE UNITED EMPLOYEES OF BORG FABRICS LIMITED UNION, ITS AGENTS OR REPRESENTATIVES TO ACT FOR US AS A COLLECTIVE BARGAINING AGENCY IN ALL MATTERS PERTAINING TO RATES OF PAY, WAGES, HOURS OF EMPLOYMENT, AND TO ENTER INTO CONTRACTS WITH BORG FABRICS LIMITED, COVERING ALL SUCH MATTERS.

IMMEDIATELY BELOW ARE FOUR COLUMNS, THE HEADINGS OF WHICH ALSO APPEAR AT THE TOP OF THE REMAINING THREE ATTACHED PAGES. THE HEADINGS READ:

NAME	SIGNATURE	\$1.00 Rec'd	OCTOBER DUES
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HANS ELLEN TESTIFIED THAT THE TYPED NAMES IN THE FIRST COLUMN ARE THE NAMES OF THE EMPLOYEES WHO HAD INDICATED THEY WERE INTERESTED IN JOINING THE EMPLOYEES UNION. HE FURTHER TESTIFIED THAT HE WITNESSED ALL OF THE SIGNATURES OF EMPLOYEES SUBSCRIBED IN THE SECOND COLUMN AND THAT HE COLLECTIVE A TOTAL OF \$5.00 FROM EACH OF THE EMPLOYEES CONCERNED, \$1.00 BEING THE INITIATION FEE AND \$4.00 BEING THE OCTOBER DUES. HE ALSO IDENTIFIED THE INITIALS APPEARING OPPOSITE EACH SIGNATURE IN THE THIRD AND FOURTH COLUMNS AS HIS OWN.

7. WE WOULD FIRST DEAL WITH THE QUESTION AS TO WHETHER THE APPLICANT HAS ESTABLISHED ITSELF AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT. IT HARDLY NEEDS STATING THAT THE CONSTITUTION OF ANY ORGANIZATION IS THE SOURCE OF ITS EXISTENCE. ACCORDINGLY, AN ORGANIZATION CANNOT COME INTO BEING UNTIL THE ADOPTION OF ITS CONSTITUTION. IT FOLLOWS THAT ANY PURPORTED ELECTION OF OFFICERS PRIOR TO THAT TIME IS PREMATURE. ALTHOUGH AN ORGANIZATION MAY COME INTO EXISTENCE UPON THE ADOPTION OF A CONSTITUTION, THE BOARD HAS HELD THAT IN ORDER FOR IT TO ACQUIRE THE STATUS OF A TRADE UNION IT MUST ELECT OFFICERS IN ACCORDANCE WITH ITS CONSTITUTION WITH AUTHORITY TO ACT ON BEHALF OF MEMBERSHIP AND TO EFFECT THE PURPOSES OF THE ORGANIZATION (SEE J. HARRIS & SONS LTD. CASE, 1960 CCH C.L.L.C. ¶16,177; C.L.S. 76-693).

8. IN THE INSTANT CASE THE CONSTITUTION WHICH WAS ADOPTED BY THE EMPLOYEES DID NOT EVEN MAKE SPECIFIC PROVISION FOR OFFICES IN THE ASSOCIATION, ALTHOUGH IT DID SET OUT THE DUTIES OF THE OFFICERS AND PROVIDED FOR THEIR SUBSEQUENT ELECTION ON SEPTEMBER 30TH, 1967. AFTER THE ADOPTION OF THE CONSTITUTION, HOWEVER, THERE WAS NO ELECTION OF OFFICERS, NOR WERE THE "PROVISIONAL" OFFICERS, ELECTED AT THE ORIGINAL ORGANIZATIONAL MEETING, CONFIRMED IN THEIR OFFICES. IN LIGHT OF THE ABOVE CITED CASE, THE BOARD FINDS THAT IT CANNOT GIVE TO THE APPLICANT THE STATUS OF A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE ACT.

9. SINCE THIS IS THE FIRST TIME THAT THE APPLICANT HAS APPEARED BEFORE THE BOARD WE WOULD MENTION THAT THE DOCUMENTARY EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT IN SUPPORT OF ITS APPLICATION IS IN AN UNUSUAL FORM. IN APPLICATIONS FOR CERTIFICATION OFTEN THE EVIDENCE OF MEMBERSHIP

TAKES THE FORM OF INDIVIDUAL APPLICATIONS FOR MEMBERSHIP SIGNED BY THE APPLICANT FOR MEMBERSHIP AND IS ACCOMPANIED BY INDIVIDUAL RECEIPTS INDICATING THE PAYMENT OF AT LEAST A \$1.00 INITIATION FEE. THE RECEIPT IS SIGNED BY THE COLLECTOR OF THE INITIATION FEE AND COUNTERSIGNED BY THE APPLICANT FOR MEMBERSHIP. ALTERNATIVELY, THE EVIDENCE OF MEMBERSHIP OFTEN TAKES THE FORM OF A COMBINED APPLICATION FOR MEMBERSHIP AND RECEIPT WHICH ON A SINGLE CARD CONTAINS AN APPLICATION FOR MEMBERSHIP AND INDICATES THE PAYMENT OF AN INITIATION FEE. THIS CARD IS SIGNED BOTH BY THE APPLICANT FOR MEMBERSHIP AND THE COLLECTOR OF THE INITIATION FEE. DEPENDING ON ITS WORDING, THE APPLICANT FOR MEMBERSHIP MAY COUNTERSIGN THE CARD. IN VIEW OF THE BOARD'S FINDING IN PARAGRAPH 8, AS TO THE STATUS OF THE APPLICANT, IT IS NOT NECESSARY FOR THE BOARD TO DECIDE WHETHER THE ORAL EVIDENCE OF HANS ELLEN, AS TO THE PAYMENT OF INITIATION FEES AND MONTHLY DUES BY THE PERSONS WHOSE NAMES APPEAR ON THE DOCUMENT FILED WITH THE BOARD, REMEDIES THE SHORTCOMINGS OF THE DOCUMENT ITSELF.

10. THE BOARD HAVING FOUND THAT THE APPLICANT IS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE ACT, THE APPLICATION IS DISMISSED.

DECISION OF BOARD MEMBER J. E. C. ROBINSON: DECEMBER 23, 1966.

I AM NOT PREPARED AT THIS TIME TO TAKE ISSUE WITH THE DECISION OF THE MAJORITY RELATING TO THE STATUS OF THE APPLICANT IN THE INSTANT CASE.

HOWEVER, BEARING IN MIND SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT, I AM OF THE VIEW THAT IT IS OPEN TO ARGUMENT WHETHER THE FAILURE OF AN ORGANIZATION TO ELECT OR CONFIRM THE ELECTION OF OFFICERS SUBSEQUENT TO THE ADOPTION OF ITS CONSTITUTION SHOULD, BY ITSELF, DEPRIVE THAT ORGANIZATION FROM ACQUIRING THE STATUS OF A TRADE UNION WITHIN THE MEANING OF THE ACT. I MAKE THIS OBSERVATION NOTWITHSTANDING THE BOARD DECISION IN J. HARRIS & SONS LTD. CASE, 1960 C.C.H. C.L.L.C., ¶16,177; C.L.S. 76-693.

12482-66-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. YORK FARMS, DIVISION OF CANADA PACKERS LIMITED (RESPONDENT) V. UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS AFL-CIO-CLC ON BEHALF OF LOCAL 469 (INTERVENER).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS D. W. FORGIE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: I. G. SCOTT AND M. A. HEELEY FOR THE APPLICANT, D. G. PYLE, J. F. MCGEE AND D. COATES FOR THE RESPONDENT, H. R. BARTENBACH FOR THE INTERVENER.

DECISION OF THE BOARD: DECEMBER 22, 1966.

...

2. THIS IS AN APPLICATION FOR CERTIFICATION. THE APPLICANT IS APPLYING, PURSUANT TO SECTION 6(2) OF THE LABOUR RELATIONS ACT, FOR A BARGAINING UNIT

CONSISTING OF STATIONARY ENGINEERS AND THEIR HELPERS.

3. SECTION 6 SUBSECTION (2) OF THE ACT PROVIDES THAT WHERE AN APPLICATION IS MADE WITH RESPECT TO A GROUP OF EMPLOYEES WHO EXERCISE TECHNICAL SKILLS OR ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM OTHER EMPLOYEES AND COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT, ACCORDING TO ESTABLISHED TRADE UNION PRACTICE, PERTAINS TO SUCH SKILLS OR CRAFT, THE BOARD SHALL DEEM SUCH A GROUP OF EMPLOYEES TO CONSTITUTE A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING IF AN APPLICATION IS MADE BY A TRADE UNION PERTAINING TO SUCH SKILLS OR CRAFT. THE CONCLUDING WORDS OF SUBSECTION (2), HOWEVER, CONTAINS THE PROVISIO THAT THE BOARD SHALL NOT BE REQUIRED TO APPLY SUBSECTION (2) WHERE A GROUP OF EMPLOYEES IS INCLUDED IN A BARGAINING UNIT REPRESENTED BY ANOTHER BARGAINING AGENT AT THE TIME THE APPLICATION IS MADE.

4. THE RESPONDENT AND THE INTERVENER HAD BEEN PARTIES TO A SERIES OF COLLECTIVE AGREEMENTS OVER A PERIOD OF SOME FIFTEEN YEARS. DURING ALL OF THIS PERIOD THE INTERVENER HAS REPRESENTED THE EMPLOYEES OF THE RESPONDENT INCLUDING THE EMPLOYEES WITH WHOM WE ARE CONCERNED IN THE INSTANT APPLICATION. THE INTERVENER DURING THE COURSE OF NEGOTIATING THE ABOVE REFERRED TO COLLECTIVE AGREEMENTS WITH THE RESPONDENT HAS BARGAINED ON BEHALF OF STATIONARY ENGINEERS AND REPRESENTATIVES OF THIS GROUP HAVE PARTICIPATED IN THE NEGOTIATIONS. MOREOVER, REPRESENTATIVES OF THE CRAFT GROUP HAVE BEEN ACTIVE IN THE AFFAIRS OF THE INTERVENER AS UNION STEWARDS AS WELL AS ON THE INTERVENER'S BARGAINING COMMITTEES. WE DO NOT ACCEPT THE SUBMISSION OF COUNSEL FOR THE APPLICANT THAT THE MANNER IN WHICH A WAGE INCREASE WAS PROVIDED TO THE STATIONARY ENGINEERS BY THE RESPONDENT SUBSEQUENT TO THE EXECUTION OF THE LAST COLLECTIVE AGREEMENT ENTERED INTO BY THE RESPONDENT AND THE INTERVENER WAS TANTAMOUNT TO SEPARATE BARGAINING FOR THE CRAFT GROUP APART FROM THE OTHER EMPLOYEES. WHILE THE WAGE INCREASE FOR THE STATIONARY ENGINEERS WAS NOT INCORPORATED IN THE COLLECTIVE AGREEMENT, WE FIND ON THE EVIDENCE THAT THE INTERVENER BARGAINED FOR THE INCREASE DURING THE COURSE OF NEGOTIATING THE COLLECTIVE AGREEMENT.

5. WE WOULD POINT OUT THAT THE ISSUE HERE IS NOT THE BARGAINING EFFECTIVENESS OF THE INTERVENER. THE ISSUE RATHER IS WHETHER THE INTERVENER HAS PROPERLY REPRESENTED THE GROUP OF EMPLOYEES IN QUESTION HAVING REGARD TO THEIR STATUS AS MEMBERS OF A CRAFT AND HAS NOT NEGLECTED THEM IN RELATION TO OTHER CLASSES OF EMPLOYEES IN THE BARGAINING UNIT (SEE SYNDICAT D'OEUVRES SOCIALES, LIMITEE CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1966, P. 748). IN LIGHT OF THE EVIDENCE OF THE HISTORY OF COLLECTIVE BARGAINING BETWEEN THE RESPONDENT AND THE INTERVENER AND THE EVIDENCE OF THE ROLE PLAYED BY REPRESENTATIVES OF STATIONARY ENGINEERS IN THE AFFAIRS OF THE INTERVENER AND IN THE NEGOTIATIONS BETWEEN THE INTERVENER AND THE RESPONDENT, THE BOARD FINDS THAT THE EMPLOYEES CONCERNED HAVE BEEN PROPERLY REPRESENTED BY THE INTERVENER.

6. THE BOARD ACCORDINGLY IS OF THE OPINION THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE IN THE INSTANT CASE.

7. THE APPLICATION IS ACCORDINGLY DISMISSED.

12513-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. BOYLE-MIDWAY (CANADA) LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
D. B. ARCHER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: DON MACDONALD FOR THE APPLICANT,
W. S. COOK, D. SANDERSON AND W. G. CARLTON FOR THE RESPONDENT,
AND SUSAN THOMSON, J. SWANTON, E. PELTZ, EDITH HUSON AND T. VIRON
FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: DECEMBER 22, 1966.

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THERE WAS FILED WITH THE BOARD A STATEMENT OF OBJECTIONS OR PETITION, SIGNED BY EIGHTEEN EMPLOYEES OF THE RESPONDENT. EVIDENCE WITH RESPECT TO THE ORIGINATION OF THE PETITION AND THE MANNER IN WHICH THE SIGNATURES THERETO WERE OBTAINED WAS GIVEN BY SUSAN THOMSON, AN EMPLOYEE OF THE RESPONDENT.

5. THE WITNESS STATED THAT SHE, AFTER CONSULTATION WITH OTHER EMPLOYEES AND WITHOUT THE INTERVENTION OF ANYONE IN MANAGEMENT, HAD ORIGINATED THE DOCUMENT, AND THAT SHE HAD HERSELF OBTAINED ALL THE SIGNATURES ON THE PETITION. THE WITNESS, HOWEVER, ALSO TESTIFIED THAT, AT THE TIME SHE OBTAINED THE SIGNATURES, THERE WAS NO HEADING ON THE PAPER USED. THE HEADING ON THE DOCUMENT WAS TYPED IN AFTER THE SIGNATURES HAD BEEN ATTACHED. IT READS, "NAMES OF EMPLOYEES AT BOYLE-MIDWAY (CANADA) LIMITED WHO DO NOT WANT A UNION". THE WITNESS STATED THAT THIS PETITION REPLACED A FORMER SIMILAR DOCUMENT WHICH HAD BORNE A HEADING, BUT WHICH, SHE SAID, HAD BEEN STOLEN FROM THE LOCKER OF ANOTHER EMPLOYEE TO WHOM IT HAD BEEN GIVEN BY THE WITNESS FOR THE PURPOSE OF OBTAINING FURTHER SIGNATURES. SHE TESTIFIED THAT WHEN CIRCULATING THE SECOND PAPER, WHICH WAS BLANK, SHE EXPLAINED TO EACH SIGNATORY THE REASON FOR WHICH THE SIGNATURES WERE BEING SOUGHT.

6. IN THE CIRCUMSTANCES AND WITHOUT REFLECTING IN ANY WAY UPON THE INTEGRITY OF THE WITNESS, SUSAN THOMPSON, THE BOARD IS NOT PERSUADED THAT IT SHOULD RELY UPON A STATEMENT OF DESIRE SIGNED IN BLANK AS WEAKENING THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO LEAD THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

8. ALTHOUGH THEIR INCLUSION OR EXCLUSION DOES NOT AFFECT THE RESULT IN THIS MATTER, THE BOARD WOULD POINT OUT THAT, FOR THE PURPOSES OF THE DEFINITION OF THE BARGAINING UNIT AND THE DETERMINATION OF THE PERCENTAGE OF UNION MEMBERSHIP, IT HAS INCLUDED THOSE EMPLOYEES DESIGNATED AS "TEMPORARY" BY THE RESPONDENT, WHO SOUGHT THEIR EXCLUSION. IN DOING SO, THE BOARD FOLLOWS ITS NORMAL PRACTICE OF INCLUDING CASUAL, TEMPORARY AND PROBATIONARY EMPLOYEES IN A BARGAINING UNIT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

INDEXED ENDORSEMENT - STRIKE UNLAWFUL

12468-66-U: ROBERT McALPINE LTD. (APPLICANT) v. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 182 (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: B. W. BINNING AND W. GIBSON FOR THE APPLICANT,
AND RAYMOND KOSKIE, R. ATKEY, N. PIKE AND G. GALLAGHER FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER
F. W. MURRAY: DECEMBER 14, 1966.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT A STRIKE CALLED OR AUTHORIZED BY THE RESPONDENT IS UNLAWFUL.

2. THE APPLICANT AND THE RESPONDENT ARE PARTIES TO TWO SUBSISTING COLLECTIVE AGREEMENTS COVERING EMPLOYEES OF THE APPLICANT AND MEMBERS OF THE RESPONDENT AT WORK SITES OF THE APPLICANT, KNOWN AS THE SEWER PROJECT AT MOUNT PLEASANT ROAD AND ROXBOROUGH AVENUE, AND AT THE SUBWAY PROJECT AT BLOOR AND ISLINGTON AVENUE, ALL IN METROPOLITAN TORONTO.

3. TO INSURE A BETTER UNDERSTANDING OF THE MATTER, IT SHOULD BE OBSERVED THAT THE SEWER PROJECT COMPRISES TWO DISTINCT OPERATIONS.

THESE ARE AN "OPEN CUT" TYPE OF EXCAVATION OR TRENCH DUG OUT ON THE SURFACE, AND A TUNNEL BORED UNDERGROUND FROM THE BOTTOM OF A SHAFT OR PIT SUNK FROM THE SURFACE TO THE UNDERGROUND LEVEL, ALONG WHICH THE TUNNEL IS INTENDED TO RUN.

4. THE APPLICANT MADE IT QUITE CLEAR THAT THE DECLARATION SOUGHT IS WITH RESPECT TO THE OCCURRENCES AT THE TUNNEL SITE ONLY. THERE WERE, HOWEVER, INCIDENTS AT BOTH THE SUBWAY PROJECT AND THE OPEN CUT CONCERNING WHICH A CONSIDERABLE AMOUNT OF EVIDENCE WAS ADDUCED BY BOTH PARTIES. THE RELEVANCE OF THIS EVIDENCE TO THE TUNNEL INCIDENT WILL BECOME APPARENT AT A LATER STAGE IN THIS DECISION.

5. IT IS QUITE CLEAR THAT ON TUESDAY, THE 22ND OF NOVEMBER, 1966, EMPLOYEES OF THE RESPONDENT WORKING ON THE TUNNEL PORTION OF THE SEWER PROJECT WALKED OFF THE JOB IN CONCERT. AS NOTED ABOVE, A COLLECTIVE AGREEMENT WAS IN OPERATION AT THE TIME OF THE WORK STOPPAGE.

6. THE RESPONDENT TOOK THE POSITION THAT IF THERE WAS AN UNLAWFUL STRIKE (WHICH IT DID NOT ADMIT), IT DID NOT CALL, AUTHORIZE, COUNSEL OR PROCURE IT. IT TOOK THE FURTHER POSITION THAT IF THE EMPLOYEES OF THE RESPONDENT AT THE SEWER PROJECT REFUSED TO WORK, THE REFUSAL WAS JUSTIFIED AND MADE NECESSARY BY REASON OF THE FACT THAT THEY WERE REQUIRED TO WORK IN AN AREA THAT WAS UNSAFE AND UNDER CONDITIONS WHICH CONSTITUTED A MENACE TO THEIR HEALTH AND LIVES, AND FINALLY, THAT THE EMPLOYEES ENTERTAINED A REASONABLE FEAR THAT TO WORK IN THE TUNNEL IN THE CIRCUMSTANCES PROPOSED BY THE COMPANY WOULD BE DANGEROUS.

7. THE POINT AT ISSUE BETWEEN THE PARTIES ON THE MATTER OF SAFETY REVOLVED AROUND THE NUMERICAL COMPOSITION OF THE GROUP OF EMPLOYEES, OR TEAM, REQUIRED TO WORK AT THE FACE OF THE TUNNEL. THE COMPANY CONSIDERED A CREW OF SEVEN TO BE SAFE. THE EMPLOYEES TAKE THE STAND THAT THE CREW MUST BE COMPOSED OF NOT LESS THAN EIGHT MEN TO ENSURE SAFETY. THE WORK STOPPAGE OCCURRED WHEN THE APPLICANT'S INTENT WAS MADE KNOWN TO THE EMPLOYEES AND BEFORE ANY WORK WAS ATTEMPTED BY THE SEVEN MAN CREW ON A REGULAR SHIFT BASIS.

8. IT MUST BE EMPHASIZED AT THIS POINT, THAT, AT THE CONCLUSION OF THE EVIDENCE AND DURING THE COURSE OF ARGUMENT, COUNSEL FOR BOTH PARTIES CLEARLY INDICATED THAT THE BOARD COULD NOT, BY REASON OF THE ABSENCE OF INDEPENDENT EXPERT WITNESSES AND BY REASON OF THE FACT THAT IT WAS NOT EXPERT IN AND COMPETENT TO DEAL WITH THE SUBJECT OF SAFETY, BE EXPECTED TO, AND WAS NOT BEING ASKED TO, MAKE ANY DECISION AS TO WHETHER THE PERFORMANCE OF THE WORK BY THE SEVEN MAN CREW WOULD, IN ACTUAL FACT, CONSTITUTE A DANGER TO THE EMPLOYEES. THE QUESTION LEFT WITH THE BOARD THEN WAS WHETHER THE EMPLOYEES BELIEVED THAT THEIR SAFETY WOULD BE IN DANGER IF THEY WERE REQUIRED TO WORK WITH A SEVEN MAN CREW.

9. THE PLEA OF JUSTIFICATION RAISED BY THE UNION IS A COMPLEX ONE IN THE PRESENT CONTEXT. THE SUBJECT MATTER IS TECHNICAL AND THE QUESTION POSED IS, TO SOME EXTENT, HYPOTHETICAL BECAUSE, WITH ONE NOTABLE EXCEPTION, WHICH WILL BE DEALT WITH LATER ON (SEE PARAGRAPH 16), NO EXCAVATION WORK

WAS CARRIED OUT BY THE SEVEN MAN CREWS PROPOSED BY THE COMPANY. THE STOPPAGE OCCURRED ON RECEIPT OF WORD OF THE COMPANY'S INTENTION TO USE THE SMALLER CREW, AND ITS DECISION REGARDING A DISPUTE CONCERNING BONUS PAYMENTS TO MUCKERS, A CONCURRENT MATTER.

10. AT THE OUTSET OF THE TUNNELLING OPERATION, THAT IS, AFTER A SHAFT HAD BEEN SUNK AND THE HORIZONTAL MINING WAS ABOUT TO COMMENCE, THERE WERE EIGHT PERSONS INVOLVED. SEVEN OF THESE WERE TO WORK ON THE FACE OF THE TUNNEL AND THE OTHER MAN WAS WHAT IS TERMED A PIT MAN. HIS DUTY, AS A PIT MAN, WAS TO HELP IN THE LOWERING OF MATERIALS FROM THE TOP OF THE SHAFT AND IN THE HOISTING OF MUCK FROM THE TUNNEL TO THE SURFACE. HIS PRIMARY FUNCTION WAS AT THE SHAFT BOTTOM. AFTER A TIME WHEN THE TUNNEL BEGAN TO DEVELOP, THE CREW WORKING AT THE FACE REQUESTED THE COMPANY TO PERMIT THE PIT MAN TO UNDERTAKE THE JOB OF DRIVING THE SMALL LOCOMOTIVE USED TO PULL THE SKIPS OF MUCK FROM THE TUNNEL TO THE PIT. HE WOULD THEN ASSIST IN HOISTING IT TO THE SURFACE. THE JOB OF DRIVING A LOCOMOTIVE BELONGS TO THE MUCKER CLASSIFICATION, AND WHILE WORKING AT THE TWO JOBS THE EMPLOYEE CONCERNED WAS ENABLED TO EARN A MUCKER'S BONUS. THE BONUS IS AN INCENTIVE BASED ON THE NUMBER OF SUPPORTING RINGS PLACED IN THE TUNNEL BY THE CREWS.

11. THE SAFETY REGULATIONS REQUIRE THAT THE PIT MAN BE EMPLOYED SOLELY AT THAT TASK. WHEN THE UNION DISCOVERED THAT HE WAS PERFORMING AS A PART TIME MUCKER AND PIT MAN, IT RAISED OBJECTIONS AND INSISTED THAT, IN ACCORDANCE WITH THE REGULATIONS, A FULL TIME PIT MAN BE INSTALLED. THE COMPANY COMPLIED WITH THE REGULATIONS BY TAKING THE MAN OFF THE LOCOMOTIVE OR MUCKERS JOB, AND PLACING HIM AT THE PIT BOTTOM, THUS REDUCING THE CREW AT THE FACE OF THE TUNNEL TO SEVEN MEN. THE UNION, AS NOTED BEFORE DEMANDED THAT THE CREW CONTINUE TO COMPRISE EIGHT MEN. THE CREW SOUGHT WOULD CONSIST OF ONE LEAD MINER, THREE MINERS AND THREE MUCKERS AT THE FACE, AND ONE MUCKER AS LOCOMOTIVE DRIVER. THE COMPANY, IN MOVING THE LOCOMOTIVE DRIVER BACK TO THE PIT, WOULD NECESSITATE THE REMOVAL OF ONE OF THE MUCKERS FROM THE FACE OF THE TUNNEL TO DRIVE THE LOCOMOTIVE, LEAVING A CREW OF SEVEN PERSONS AT THE FACE.

12. AT THIS POINT THE EMPLOYEES ON THE CREW IN THE TUNNEL REFUSED TO CONTINUE TO WORK ON THE GROUNDS, THEY ALLEGE, THAT THE REMOVAL OF ONE MUCKER FROM THE FACE OF THE TUNNEL WOULD CREATE A HAZARD TO THEIR LIVES.

13. AT THIS TIME, HOWEVER, THERE WAS ALSO GOING ON, AND HAD BEEN GOING ON BETWEEN THE COMPANY AND THE UNION, A DISPUTE WITH RESPECT TO INCENTIVE BONUSES. THESE BONUSES, AT THE TIME, WERE ON A GRADUATED SCALE FROM LEAD MINER DOWN. THE UNION WERE DEMANDING THAT THE MUCKER'S BONUS BE MADE EQUAL TO THAT OF THE MINER. WHEN THE WORK STOPPAGE OCCURRED, THEREFORE, THERE WERE THESE TWO MATTERS BETWEEN THE PARTIES THE SIZE OF THE TUNNEL CREW AND THE BONUS INCENTIVE TO BE PAID TO MUCKERS.

14. IN SUPPORT OF ITS THEORY THAT A SEVEN MAN CREW WOULD BE INADEQUATE FROM THE POINT OF VIEW OF SAFETY, THE UNION OFFERED THE EVIDENCE OF THE UNDERGROUND WORKERS WHO HAD BEEN WORKING AT THE TUNNEL FACE AT THE TIME OF

THE STOPPAGE AND WHO WOULD BE PART OF THE CREWS WHO WOULD HAVE TO WORK IF THE NEW SYSTEM WENT INTO EFFECT. THESE MEN RANGED FROM LEAD MINERS TO MUCKERS TO UNION SAFETY COMMITTEE MEN. THEY WERE ALL EXPERIENCED TUNNELLERS AND SOME HAD WORKED ON THE T.T.C. SUBWAY TUNNELS. ONE OF THESE LATTER, WITH QUESTIONABLE RELEVANCE AND PROBATIVE VALUE, TESTIFIED THAT HE HAD BEEN BURIED IN SAND DURING THE T.T.C. SUBWAY WORK. NO SAND HAS BEEN ENCOUNTERED IN THIS TUNNEL UNDER CONSIDERATION.

15. THE MAIN BURDEN AND THEME OF THE EVIDENCE CONSISTENTLY GIVEN BY THE WORKMEN WAS THAT THE TUNNELLING OPERATION DEPENDED UPON A BALANCING OF SPEED AND CARE IN ORDER TO DO A COMPETENT AND SAFE JOB. IT WAS THEIR EVIDENCE THAT THE MUCK, OR MATERIAL MINED FROM THE TOP OF THE FACE, MUST BE REMOVED AS QUICKLY AS POSSIBLE FROM AROUND THE BOTTOM OF THE FACE. THIS IS NECESSARY TO ENSURE SPEEDY CONSTRUCTION OF RETAINING STRUCTURES - THE COMPONENTS FOR WHICH, INCIDENTALLY, ARE PASSED TO THE MINERS BY THE MUCKERS. SPEED IS ALSO NECESSARY IN ORDER TO BE SURE THAT THERE IS NO MUCK IN THE CREW'S WAY IF IT SHOULD BE NECESSARY TO MOVE QUICKLY BACK FROM THE FACE IN THE EVENT OF A COLLAPSE. THE WITNESSES IN GENERAL AND LEAD MINER, FRANCESCO, IN PARTICULAR, FELT THAT IN ORDER TO HAVE THE NECESSARY SPEED IN ERECTING THE RETAINING SUPPORTS, (THE LONGER THE TUNNEL IS WITHOUT SUPPORTS THE GREATER THE DANGER OF COLLAPSE), AND TO ENSURE THE SPEEDY REMOVAL OF THE MINED DEBRIS, IT WAS VITAL THAT THERE SHOULD BE THREE MUCKERS AT THE FACE OF THE TUNNEL.

16. THE FOREGOING EVIDENCE DOES NOT DEAL WITH ANY FACTUAL SITUATION INVOLVING A SEVEN MAN CREW. THERE IS EVIDENCE, HOWEVER, CLEAR AND UNDENIED, (AND ALSO UNEXPLAINED), THAT A CREW THAT WAS SHORT, NOT ONE MAN, BUT TWO, WORKED A COMPLETE EIGHT HOUR SHIFT WITHOUT ANY COMPLAINT FROM ANYONE THAT THE CONDITION WAS UNSAFE. THIS CREW COMPLETED A NORMAL AMOUNT OF WORK, EXACTLY THE SAME AMOUNT, AS A MATTER OF FACT, AS A SECOND SHIFT WORKING THE SAME DAY WITH A FULL CREW OF EIGHT MEN. IT IS TRUE THAT THIS WAS BUT ONE INSTANCE. NEVERTHELESS, IT RAISES DOUBTS CONCERNING THE REASONABLENESS OF THE ARGUMENTS WITH RESPECT TO SAFETY EMBODIED IN THE EVIDENCE REVIEWED ABOVE, AND MOST CERTAINLY WITH THAT PORTION OF IT DIRECTLY RELATED TO SPEED, SINCE THE SIX MAN CREW EQUALLED THE WORK OF THE LARGER CREW WITHIN THE SAME TIME LIMITS.

17. THERE ARE OTHER MATTERS OF A PRACTICAL KIND REQUIRING CONSIDERATION IN RESPECT TO THE UNION EVIDENCE AND ARGUMENT. IN THE EARLY STATES OF THE TUNNELLING - AS PREVIOUSLY NOTED - THE MUCKER ON THE LOCOMOTIVE WAS ALSO THE PART TIME PIT MAN, SO THAT, IN THOSE DAYS, SAFETY WAS APPARENTLY LEFT IN THE HANDS OF A CREW OF SEVEN AND ABOUT ONE HALF MEN. AT THE TIME THE EMPLOYEES ASKED THAT THE PIT MAN BE PUT ON THE LOCOMOTIVE, NO MENTION WAS MADE OF SAFETY. THE REQUEST WAS THAT HE BE GIVEN AN OPPORTUNITY TO EARN A MUCKERS' BONUS. THERE WAS ALSO EVIDENCE TO THE EFFECT THAT CREWS WORKED SHORT-HANDED ON SEVERAL OCCASIONS WHEN EMPLOYEES WERE ABSENT. NO QUESTION OF SAFETY WAS RAISED ON THESE OCCASIONS.

18. IT SHOULD ALSO BE REMEMBERED THAT, AT THE TIME OF THE WALKOUT, A BARGAINING SITUATION WAS VERY MUCH TO THE FORE WITH RESPECT TO BONUSES.

THIS MATTER, IF IS TRUE, WAS RESOLVED LATER, BUT NEVERTHELESS CANNOT BE OVERLOOKED AS AN IMPORTANT ELEMENT OF THE SITUATION AT THE TIME OF THE STOPPAGE. IT WAS AN ITEM WHICH OBVIOUSLY COULD NOT STAND THE LIGHT OF DAY AS A SOLE ISSUE FOR A WALKOUT IN THE FACE OF A SUBSISTING COLLECTIVE AGREEMENT. IT WOULD BE INDEFENSIBLE ON ITS OWN. PLAINLY, IT WOULD NOT INVOKE PUBLIC SYMPATHY.

19. ALL THE EVIDENCE OFFERED BY THE COMPANY IN REPLY TO THE DEFENCE BASED ON THE SAFETY QUESTION, WAS GIVEN BY EMPLOYEES OF THE COMPANY. THESE WITNESSES COVERED A RANGE FROM PROFESSIONAL STRUCTURAL ENGINEER TO THE PROJECT ENGINEER, WHO IS ALSO A PROFESSIONAL ENGINEER AND IS IN CHARGE OF THE OPERATION UNDER CONSIDERATION, TO THE SHIFT BOSS WHOSE PLACE OF WORK IS IN THE TUNNEL WITH THE CREW. THE PROFESSIONALS WERE WELL QUALIFIED ACADEMICALLY AND AS THE RESULT OF PRACTICAL EXPERIENCE ON TUNNELLING. THIS LATTER APPLIED PARTICULARLY TO MR. SUTHERLAND, THE PROJECT ENGINEER, WHO HAS HAD EXTENSIVE PRACTICAL EXPERIENCE ON TUNNEL WORK IN THE TORONTO AREA, INCLUDING THE SUBWAY TUNNELS BUILD FOR THE TORONTO TRANSIT COMMISSION. THE SHIFT BOSS, EUGENE CALHOUN, HAS HAD VERY EXTENSIVE EXPERIENCE IN TUNNELLING IN THE TORONTO AREA, INCLUDING ALL OF THE T.T.C. TUNNELS.

20. THE CONSENSUS OF THESE WITNESSES, AS GATHERED FROM THEIR TESTIMONY, IS THAT THE CREW PROPOSED BY THEM IS NOT ONLY ADEQUATE TO MEET THE DEMANDS OF SAFETY, BUT MORE THAN ADEQUATE. IT WAS GIVEN IN EVIDENCE THAT THE MATTER OF SAFETY WAS GIVEN CONSIDERATION BY THE COMPANY BEFORE ANY DECISION WAS REACHED AS TO THE SIZE OF THE TEAM PROPER FOR THE WORK AT HAND. AGAIN, OF COURSE, SINCE THERE IS A LACK OF PRACTICAL EXPERIMENTATION WITH THE CREW, THE EVIDENCE OF THE COMPANY'S WITNESSES IS AS THEORETICAL AS THAT OF THE UNION'S IN THAT RESPECT, EXCEPTING, OF COURSE, THAT CONCERNING THE CREWS THAT OPERATED ON THE OCCASIONS WHEN EMPLOYEES WERE ABSENT.

21. WE WISH, AT THIS POINT, TO MAKE PERFECTLY CLEAR WHAT SHOULD REALLY BE OBVIOUS, AND THAT IS THAT WE ARE IN NO WAY WHATSOEVER SUGGESTING THAT THERE IS A BURDEN UPON A RESPONDENT, IN A MATTER SUCH AS THIS, TO ENTER UPON THE ALLEGED DANGEROUS SITUATION AND TRY IT OUT BEFORE PROTESTING THE DANGER.

22. THE EVIDENCE FROM BOTH PARTIES, THEN, ON THE ISSUE OF SAFETY, IS SUBJECTIVE AND SELF-SERVING AND, CONSEQUENTLY, DIRECTLY CONTRADICTORY ON A HIGHLY TECHNICAL MATTER, AND DEMONSTRATES NOTHING BUT AN EVIDENTIARY IMPASSE THAT CANNOT BE RESOLVED WITHOUT INDEPENDENT EXPERT TESTIMONY.

23. THAT IS TO SAY, THE STATEMENT OF COUNSEL THAT THE BOARD COULD NOT, IN THE ABSENCE OF EXPERT TESTIMONY FROM INDEPENDENT WITNESSES, REACH A PROPER CONCLUSION ON THE QUESTION AS TO WHETHER THE SITUATION CONTEMPLATED WAS IN FACT DANGEROUS, HAS VIRTUALLY EQUAL APPLICATION WHEN THE BOARD ADDRESSES ITSELF TO THE QUESTION AS TO WHETHER THE ACTION TAKEN BY THE EMPLOYEES WAS BASED UPON REASONABLE GROUNDS. WITHOUT THE CRITERION OR TOUCHSTONE OF INDEPENDENT EVIDENCE, THE BOARD IS HAMPERED ALMOST TO THE POINT OF PARALYSIS IN REACHING A DECISION, SINCE THE LACK OF SUCH OBJECTIVE AND DISINTERESTED EVIDENCE LEAVES IT WITHOUT A MEANS OF GAUGING THE VALUE

OF THE PROFFERED CONTRADICTORY EVIDENCE AGAINST THE AUTHORITATIVE AND DETACHED VIEWPOINT OF AN INDEPENDENT EXPERT.

24. WHERE THE SUBJECT IS COMPLEX AND TECHNICAL AND INVOLVES PROBLEMS AND CONSIDERATIONS PECULIAR TO THE WORK BEING REVIEWED, A FORUM THAT IS NOT EXPERT IN THE FIELD CONCERNED CANNOT DETERMINE THE REASONABLENESS OF OF ANY PARTICULAR POINT OF VIEW ON THE BASIS OF THE SAY SO OF THE ANTAGONISTS. IT MUST HAVE EXPERT EVIDENCE AGAINST WHICH TO MEASURE THE WORTH OF THE CONFLICTING EVIDENCE SO AS TO BE ABLE TO FORMULATE ITS OWN INDEPENDENT JUDGMENT IN THE LIGHT OF THE DISINTERESTED INDEPENDENT TESTIMONY OF THE EXPERT. IN THE INSTANT CASE THERE APPEARED TO BE NO REASON WHATSOEVER WHY INDEPENDENT WITNESSES COULD NOT HAVE BEEN PRODUCED FOR THE ASSISTANCE OF THE BOARD IN WHAT COUNSEL MUST HAVE CLEARLY APPREHENDED WAS A MOST DIFFICULT CASE FROM A NUMBER OF POINTS OF VIEW. IT IS INDEED REGRETTABLE THAT THE BOARD IS CONSTRAINED TO DISPOSE OF THIS WITHOUT THE ENLIGHTENMENT THAT INDEPENDENT EXPERT TESTIMONY MIGHT HAVE PROVIDED. THE PRIMARY ONUS IN THIS REGARD LAY, OF COURSE, UPON THE UNION WHO RAISED THE DEFENCE OF JUSTIFICATION BY REASON OF REASONABLE FEAR.

25. THE FAILURE OF THE RESPONDENT TO INTRODUCE CONFIRMATORY INDEPENDENT TESTIMONY FROM AN EXPERT WITNESS CANNOT HELP BUT REFLECT ADVERSELY UPON ITS CONTENTION THAT THE NUMBER OF EMPLOYEES IN THE CREW SOUGHT TO BE INTRODUCED BY THE APPLICANT COULD BE DEEMED, UPON REASONABLE GROUNDS, TO BE UNSAFE.

26. THIS FAILURE BECOMES MORE DIFFICULT TO UNDERSTAND WHEN ONE CONSIDERS THE CONDUCT OF THE RESPONDENT'S SECRETARY-TREASURER, WITH RESPECT TO A QUESTION OF SAFETY RAISED AT THE OPEN CUT SITE. MR. GALLAGHER, AFTER THE TUNNEL WALKOUT HAD COMMENCED, AND AFTER HE HAD CALLED MEMBERS OF HIS LOCAL OFF THE OPEN CUT JOB, WAS GIVEN REASON TO SUSPECT THAT THE BANKS OF THE OPEN CUT WERE NOT AT THE REQUIRED DEGREE OF SLOPE TO ENSURE SAFETY. MR. GALLAGHER IMMEDIATELY, AND ALTHOUGH NO REAL EMERGENCY EXISTED AT THE TIME, BEGAN TO CALL FOR GOVERNMENT SAFETY INSPECTORS TO VIEW THE JOB. EVENTUALLY HE APPEALED TO THE DEPUTY MINISTER OF LABOUR. AS A RESULT OF HIS INSISTANCE, MR. GALLAGHER WAS ABLE TO GET FOUR GOVERNMENT SAFETY INSPECTORS ON THE OPEN CUT SITE ON A SATURDAY MORNING. THE UNION CALLED ONE OF THESE WITNESSES AT THE HEARING. HIS EVIDENCE WAS CONFINED TO THE OPEN CUT SITUATION.

27. WHEN COUNSEL FOR THE COMPANY ASKED MR. GALLAGHER WHY HE HAD NOT SOUGHT TO HAVE THE TUNNEL SITE VISITED BY INSPECTORS, HE WAS VISIBLY UPSET AND FINALLY STATED THAT NO ONE HAD ASKED HIM TO CALL INSPECTORS TO THAT SITE. SINCE THE CORE AND CENTRE OF THE PRESENT ISSUE IS THE TUNNEL SITE, AND THE OPEN CUT BUT A SECONDARY ISSUE, MR. GALLAGHER'S FAILURE TO SEEK THE ASSISTANCE OF GOVERNMENT SAFETY INSPECTORS AT THE TUNNEL SITE IS STRANGE, TO SAY THE LEAST. HE OBTAINED A "STOP WORK ORDER" FOR THE OPEN CUT BUT, INEXPLICABLY, DID NOT SEEK TO GET ONE ON THE TUNNEL. HE BROUGHT AN EXPERT WITNESS IN WHERE HE WAS NOT REALLY NEEDED AND FAILED TO BRING ONE IN WHERE HE WAS NEEDED. IN THE CIRCUMSTANCES, THE BOARD IS COMPELLED TO FIND THAT THE UNION HAS FAILED TO ESTABLISH THE DEFENCE OF JUSTIFICATION IT PLEADS BEFORE THE BOARD.

28. ON THE BASIS OF THE EVIDENCE BEFORE IT ON THIS ISSUE, THE BOARD, THEREFORE, FINDS THAT THE EMPLOYEES OF ROBERT McALPINE LTD., WHO LEFT THE COMPANY'S WORK SITE AT THE SEWER PROJECT AT MOUNT PLEASANT ROAD AND ROXBOROUGH AVENUE ON TUESDAY, NOVEMBER 22ND, 1966, PARTICIPATED IN AND ARE PARTICIPATING IN A STRIKE WITHIN THE MEANING OF SECTION 1 (1) (i) OF THE LABOUR RELATIONS ACT AND THAT SUCH STRIKE IS UNLAWFUL.

29. IT SHOULD BE CLEARLY UNDERSTOOD THAT HAD THE UNION PRODUCED EVIDENCE FROM WHICH THE BOARD COULD CONCLUDE THAT THE WALKOUT TOOK PLACE BECAUSE OF REASONABLE APPREHENSION OF DANGER, THE BOARD WOULD, WITHOUT ANY HESITATION, HAVE DISMISSED THE APPLICATION. THERE MUST BE NO DOUBT IN ANYONE'S MIND THAT THE BOARD WILL NOT HOLD ANY STOPPAGE OF WORK TO BE UNLAWFUL WHERE IT IS ESTABLISHED THAT THE CONDITIONS ARE IN FACT UNSAFE OR WHERE IT FINDS THAT THE EMPLOYEES CONCERNED WERE UNDER A REASONABLE APPREHENSION OF DANGER. IT IS, OF COURSE, INCUMBENT UPON A PARTY WHO RAISES THE ISSUE TO PROVE NOT MERELY APPREHENSION, BUT ALSO THAT THAT APPREHENSION IS BASED ON REASONABLE GROUNDS. THE REASON FOR THIS MUST BE OBVIOUS BECAUSE, OTHERWISE, IT WOULD BE OPEN TO ANYONE TO BRING PRESSURE TO BEAR UPON AN EMPLOYER, WITHOUT CONTRAVENING THE ACT, BY SIMPLY ALLEGING FEAR AND THEN STRIKING. THE DANGERS TO INDUSTRIAL TRANQUILITY INHERENT IN SUCH A SITUATION ARE TOO PATENT TO REQUIRE FURTHER EXPLANATION.

30. THE REMAINING ISSUE RAISED BY THE RESPONDENT, BY WAY OF DEFENCE, WAS THAT IT DID NOT CALL OR AUTHORIZE THE WORK STOPPAGE. WHATEVER MIGHT BE FOUND TO BE THE TRUE SITUATION WITH RESPECT TO THE CALLING OF THE STRIKE, AND THERE IS SOME EVIDENCE FROM WHICH A CONCLUSION MIGHT REASONABLY FLOW, INDICATING THAT THE UNION, BY REASON OF THE PRESENCE OF ONE OF ITS OFFICERS AT THE SITE WHEN THE STRIKE BEGAN, WAS INVOLVED IN CALLING IT, THERE IS NO QUESTION WHATSOEVER THAT THE UNION AUTHORIZED THE STRIKE AND HAS GIVEN IT FULL SUPPORT THROUGHOUT ITS DURATION.

31. MR. GALLAGHER TESTIFIED THAT NOTWITHSTANDING THE FACT THAT THERE WAS A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT HEREIN, COVERING THE EMPLOYEES CONCERNED, HE "PULLED" THEM OFF THE OPEN CUT PROJECT AT MOUNT PLEASANT ROAD AND ROXBOROUGH AVENUE. HE DID THIS, HE EXPLAINED, TO PUT PRESSURE ON THE COMPANY IN THE MATTER OF THE TUNNEL. HE FOLLOWED THE SAME PROCEDURE AT THE SUBWAY PROJECT AT BLOOR AND ISLINGTON, AND STATED THAT THIS, TOO, WAS DONE TO FORCE THE COMPANY'S HAND IN THE DISPUTES AT THE TUNNEL SITE. A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE PARTIES HERETO COVERED THE EMPLOYEES CALLED OUT AT THE SUBWAY ALSO.

32. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS THAT THE STRIKE ENGAGED IN BY THE EMPLOYEES OF THE APPLICANT AT THE SEWER PROJECT AT MOUNT PLEASANT ROAD AND ROXBOROUGH AVENUE IN METROPOLITAN TORONTO, IS CONTRARY TO THE PROVISIONS OF SECTION 54(1) OF THE LABOUR RELATIONS ACT AND IS UNLAWFUL, AND THAT IT WAS AUTHORIZED BY THE RESPONDENT, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183.

DECISION OF BOARD MEMBER P. J. O'KEEFE:

DECEMBER 14, 1966.

I DISSENT. I WOULD HAVE DISMISSED THE APPLICATION.

I CONCUR WITH THE MAJORITY IN THE REASONING OUTLINED IN PARAGRAPH 29 OF THEIR DECISION, IN WHICH THEY STATE:

IT SHOULD BE CLEARLY UNDERSTOOD THAT HAD THE UNION PRODUCED EVIDENCE FROM WHICH THE BOARD COULD CONCLUDE THAT THE WALKOUT TOOK PLACE BECAUSE OF REASONABLE APPREHENSION OF DANGER, THE BOARD WOULD, WITHOUT ANY HESITATION, HAVE DISMISSED THE APPLICATION. THERE MUST BE NO DOUBT IN ANYONE'S MIND THAT THE BOARD WILL NOT HOLD ANY STOPPAGE OF WORK TO BE UNLAWFUL WHERE IT IS ESTABLISHED THAT THE CONDITIONS ARE IN FACT UNSAFE OR WHERE IT FINDS THAT THE EMPLOYEES CONCERNED WERE UNDER A REASONABLE APPREHENSION OF DANGER. IT IS, OF COURSE, INCUMBENT UPON A PARTY WHO RAISES THE ISSUE TO PROVE NOT MERELY APPREHENSION, BUT ALSO THAT THAT APPREHENSION IS BASED ON REASONABLE GROUNDS. THE REASON FOR THIS MUST BE OBVIOUS BECAUSE, OTHERWISE, IT WOULD BE OPEN TO ANYONE TO BRING PRESSURE TO BEAR UPON AN EMPLOYER, WITHOUT CONTRAVENING THE ACT, BY SIMPLY ALLEGING FEAR AND THEN STRIKING. THE DANGERS TO INDUSTRIAL TRANQUILITY INHERENT IN SUCH A SITUATION ARE TOO PATENT TO REQUIRE FURTHER EXPLANATION.

I SUBMIT THAT THE RESPONDENT UNION CLEARLY, THROUGH EVIDENCE TENDERED TO THE BOARD DURING THE HEARING, ESTABLISHED BEYOND DOUBT THAT THE EMPLOYEES INVOLVED IN THE WALKOUT DID SO "BECAUSE OF REASONABLE APPREHENSION OF DANGER". I FURTHER SUBMIT THAT THE RESPONDENT, THROUGH EVIDENCE TENDERED AT THE BOARD HEARING, CLEARLY ESTABLISHED THAT THERE WAS, ON THE PART OF THE EMPLOYEES, "NOT MERELY APPREHENSION, BUT ALSO THAT THE APPREHENSION IS BASED ON REASONABLE GROUNDS".

THE EVIDENCE TENDERED TO THE BOARD BY THE AFFECTED EMPLOYEES WAS AS FOLLOWS:

R. L. LYONS, MINER AND SHOP STEWARD, SAID THE CREW WOULD NOT WORK WHEN THE PIT BOTTOM MAN WAS TAKEN AWAY FROM THE FACE BECAUSE THEY FELT IT WAS UNSAFE. LYONS, ON HIS OWN BEHALF, SAID HE WOULD NOT WORK BECAUSE HE FELT HIS LIFE WAS AT STAKE.

WILLIAM FORD, LEAD MINER, SAID THAT THEY NEEDED THREE MUCKERS TO TAKE THE MUCK AWAY.

THE TOP HAD TO BE BRACED FAST BECAUSE THE GROUND WAS BAD. IF ANYTHING HAPPENED AND THERE WERE 8 OR 9 BUCKETS OF MUDD AT THE BOTTOM, THAT THEY COULD TRIP OVER IT. HE SAID IF THE FACE CRACKED AND THEY WERE UNDERNEATH, WHERE COULD THEY GO IF THE MUCK WAS PILED UP.

HE SAID THE FASTER YOU WORK THE SAFER YOU ARE, THEY MUST HAVE 8 MEN AT LEAST.

THE CONDITION OF THE GROUND CHANGES EVERY TWO FEET. IF WATER SEEPS, THEY MUST BE FAST TO GET THE HEADBOARDS IN. IF THE TOP GAVE AWAY, THEY WOULD BE IN TROUBLE WITH LESS MEN.

D. FELIZ, MINER, SAID WE STOPPED BECAUSE THERE WERE NOT ENOUGH MEN AT THE FACE, THE WORK CONDITIONS WERE NOT SAFE. IF ANYTHING HAPPENED, THERE WERE NOT ENOUGH MEN. HE SAID HE HAD BEEN IN A TUNNEL ACCIDENT PREVIOUSLY AND HAD BEEN BURIED IN SAND AT THE TIME. IF THEY HAVE 8 MEN THEY CAN WORK FAST, SO THAT THEY CAN BRACE FAST, THEY MUST BRACE FAST IF THEY WERE GOING TO AVOID ACCIDENTS. THE NUMBER OF MEN HAD A LOT TO DO WITH SAFETY, IF WE HAVE MORE MEN WE CAN WORK FASTER AND MAKE THE TUNNEL SAFER.

ANTHONY FRANCESCO, MINER, GAVE EVIDENCE TO THE EFFECT THAT THE GROUND WAS BAD AND WORKING WITH LESS MEN MEANT THE SAFETY OF THEIR LIVES. HE FELT THEY NEEDED AN ADDITIONAL ONE OR TWO MEN FOR SAFETY. HE SAID MORE MEN WOULD TAKE MUCK AWAY IN TIME SO THAT THEY CAN GET TIMBERS IN ON TIME. IF THEY SHOULD SLIDE OVER MUCK AND THE TIMBERS FALL DOWN THEY WOULD GET KILLED. HE SAID, UNDER CROSS-EXAMINATION, THAT IF YOU HAVE HAD PREVIOUS BAD EXPERIENCES THAT YOU GET WARY. HIS FURTHER EVIDENCE WAS TO THE EFFECT THAT THEY WANTED THE EXTRA MAN FOR THE SAFETY OF THEIR LIVES, WITH THE OTHER MAN WE CAN MUCK OUT FAST FOR SAFETY, THE JOB WAS A TEAM EFFORT.

RICARDO FRANCESCO, LEAD MINER, GAVE EVIDENCE THAT WHEN HE LEARNED THAT THE COMPANY WAS TAKING A MAN AWAY FROM THE FACE, HE TOLD HIS SUPERIOR THAT HE WAS NOT GOING TO WORK WITH ONE MAN SHORT FOR SAFETY REASONS. HE FURTHER STATED THAT THE DECISION NOT TO WORK WAS A DECISION OF THE CREW FOR SAFETY. HE SAID EVERYONE ON THE CREW HAD TO WATCH FOR SAFETY.

CLARE CALHOUN, PIT BOTTOM MAN AND LOCO DRIVER, SAID THE COMPANY WANTED TO TAKE HIM OFF THE FACE, AND HE FELT THIS WAS UNSAFE.

THE EVIDENCE TENDERED BY THE FOREGOING WAS EVIDENCE OF THE "FRONT LINE TROOPS". THESE WERE THE PEOPLE WHO STOOD TO LOSE THEIR LIVES IN AN ACCIDENT, WHILE IT MIGHT BE SAID THAT THEY WERE NOT "WELL QUALIFIED ACADEMICALLY", NEVERTHELESS, THEY WERE ALL EXPERIENCED TUNNEL MEN, AND, AS A RESULT OF THEIR PAST EXPERIENCE, WE WOULD HAVE TO GIVE SUFFICIENT WEIGHT TO THEIR EVIDENCE.

MR. NORMAN PIKE, SAFETY DIRECTOR OF LOCAL 183, WAS BY FAR THE MOST EXPERIENCED AND COMPETENT WITNESS IN TERMS OF SAFETY THAT GAVE EVIDENCE AT THE HEARING. HE TOLD THE BOARD THAT HIS DUTIES INVOLVED VISITING AS MANY JOB SITES AS POSSIBLE AND SEE THAT PROPER SAFETY MEASURES WERE IN FORCE.

HE WAS A MEMBER OF THE CANADIAN ASSOCIATION OF PROFESSIONAL SAFETY MEN. HE WAS A LECTURER ON SAFETY, AND HE WAS WELL ACQUAINTED WITH SAFETY LEGISLATION.

IN ADDITION TO HIS QUALIFICATIONS AS A SAFETY EXPERT, HE ALSO INFORMED THE BOARD THAT HE HAD BEEN A MINER AND LEAD MINER FOR THE APPLICANT COMPANY FOR SIX YEARS PRIOR TO GOING ON STAFF WITH THE UNION. WE HAD PREVIOUS EVIDENCE FROM MR. GIBSON, THE COMPANY WITNESS, THAT MR. PIKE HAD SUFFERED AN INJURY WHILE EMPLOYED BY THE COMPANY.

MR. PIKE TOLD THE BOARD THAT WHEN HE BROUGHT TO THE ATTENTION OF MR. KORING AND MR. McMULLEN THAT THE COMPANY WAS IN VIOLATION OF THE SAFETY LEGISLATION WITH REGARD TO THE PROVISIONS OF A PIT MAN AT THE SHAFT, HE WAS TOLD BY THEM THAT THEY EXPECTED TROUBLE FROM THE DEPARTMENT OF LABOUR ON THIS MATTER, HOWEVER, THEY HAD NOT PROVIDED FOR THE PIT MAN BECAUSE THEY HAD MADE A SEPARATE DEAL WITH THE CREW ON THIS SITUATION.

MR. PIKE'S EVIDENCE WAS COMPLETE AND EXTREMELY TECHNICAL, HE EXPLAINED THE DIFFERENCE BETWEEN THE T.T.C. SUBWAY OPERATION AS OPPOSED TO THE INSTANT TUNNEL JOB, HIS EVIDENCE WAS THAT THE SUBWAY OPERATION WAS A SAFER JOB BECAUSE OF A SYSTEM WHEREBY A STEEL SHIELD WAS USED TO SECURE THE TOP, THIS STEEL SHIELD WAS PUSHED INTO PLACE HYDRAULICALLY. HE SAID THERE WOULD BE LESS WORK AND THE JOB WOULD BE SAFER IN THE SUBWAY OPERATION BECAUSE OF THE STEEL SHIELD.

HE SAID THAT WITH LESS WORK ON THE SUBWAY, THERE WERE ALWAYS NINE MEN AT THE FACE. FROM A SAFETY POINT OF VIEW, IN VIEW OF THE DIFFICULTY OF BRACING WITH TIMBER IN THIS TUNNEL OPERATION, HE COULD NOT RECOMMEND TO THE MEN INVOLVED THAT THEY GO BACK TO WORK.

NOW WE TURN TO THE EVIDENCE OF THE COMPANY'S WITNESSES:

H. V. KORING, PROJECT MANAGER, SAID THAT DUE TO THE CONDITION OF THE TUNNEL FACE AT THE TIME THEY COULD NOT SEE NEED FOR INCREASING THE NUMBER OF MEN, ALSO THEY EXPECTED SMALLER PRODUCTION DUE TO SOIL CONDITIONS PREVAILING. THE NUMBER OF MEN AT THE FACE WAS ADEQUATE AND THIS WAS THE CONSIDERED JUDGEMENT OF THE COMPANY. FOR SAFETY PURPOSES THE NUMBER AT THE FACE WAS MORE THAN ADEQUATE. UNDER CROSS-EXAMINATION, MR. KORING STATED THAT HE HAD NO EXPERIENCE IN TUNNELLING IN TORONTO. APART FROM THIS PARTICULAR JOB, HE HAD PREVIOUSLY WORKED IN CONSTRUCTION IN MONTREAL, BUT WAS NOT INVOLVED WITH TUNNELLING THERE.

MR. KORING ADMITTED THAT HE HAD WORKED THE TUNNEL CREW FOR SOME PERIOD OF TIME WITHOUT HAVING A PIT MAN AT THE BASE OF THE SHAFT. HE SAID HE WAS AWARE THAT THIS WAS CONTRARY TO THE REQUIREMENTS OF THE DEPARTMENT OF LABOUR ACT.

HIS ATTITUDE TOWARD SAFETY CAN BEST BE GAUGED BY HIS REMARK THAT THE COMPANY WAS ONLY IN TECHNICAL VIOLATION WITH REGARD TO A CITY OF TORONTO INSPECTORS STOP WORK ORDER ON A DANGEROUS OVERHANGING BANK OF EARTH IN AN OPEN CUT OPERATION.

WILLIAM GIBSON, COMMERCIAL MANAGER, STATED THAT WHILE HE TOLD THE UNION THAT THE JOB WAS SAFE, HE TOOK THIS POSITION BECAUSE OF THE ADVICE TENDERED TO HIM BY MR. KORING AND MR. McMULLEN. MR. GIBSON SAID HE HAD NEVER WORKED IN A TUNNEL AND WOULD NOT APPRECIATE THE DIFFICULTIES IN TUNNELLING.

EDWARD SUTHERLAND, PROJECT ENGINEER, GAVE SOME DETAILED EVIDENCE WITH REGARD TO THE AMOUNT OF MUCK TAKEN FROM THIS PARTICULAR JOB AS OPPOSED TO THE AMOUNT OF MUCK IN THE T.T.C. SUBWAY OPERATION. HE ADMITTED THAT HIS CALCULATIONS ON THE AMOUNT OF MUCK WERE THEORETICAL. HE ADMITTED THAT IN THE SUBWAY OPERATION THERE IS MORE SUPPORT TO THE TOP OF THE TUNNEL BECAUSE OF THE USE OF A SHIELD AS OPPOSED TO TIMBERING IN THE SEWER OPERATION.

MR. SUTHERLAND, THOUGH OBVIOUSLY WELL QUALIFIED AND EXPERIENCED IN TUNNEL OPERATIONS, DID NOT GIVE EVIDENCE ON THE SAFETY FACTOR IN THIS DISPUTE.

EUGENE CALHOUN, SHIFT FOREMAN, GAVE EVIDENCE TO THE EFFECT THAT THE PRESENT CREW OF SEVEN WAS

ADEQUATE AND WAS SAFE COMPLETELY. HE ADMITTED THAT THE FASTER THE MEN ACED THE TOP, THE SAFER IT WOULD BE. MR. CALHOUN WAS, IN MY OPINION, BY FAR THE MOST COMPETENT AND EXPERIENCED WITNESS CALLED BY THE APPLICANT COMPANY HE HAD HAD A GREAT DEAL OF PRACTICAL EXPERIENCE IN TUNNEL OPERATIONS, HOWEVER, APART FROM SAYING THAT THE PROPOSED SMALLER TUNNEL CREW WAS ADEQUATE FOR SAFETY, HE DID NOT GIVE TO THE BOARD ANY REASONS WHY HE HAD COME TO THAT CONCLUSION.

WHEN ALL OF THE EVIDENCE IS TAKEN TOGETHER IT IS QUITE OBVIOUS THAT THE RESPONDENT UNION TENDERED TO THE BOARD SUBSTANTIAL EVIDENCE ON THE SAFETY ASPECT OF THIS TUNNEL OPERATION, COMPARED WITH THE VERY LIMITED EVIDENCE OF THE APPLICANT ON THIS SCORE.

I COULD NOT AGREE WITH MY COLLEAGUES THAT THE EVIDENCE TENDERED BY MR. KORING WITH RESPECT TO THE ONE INSTANCE IN WHICH A CREW, WITH TWO MEN ABSENT, PERFORMED THE SAME AMOUNT OF WORK AS A FULL CREW, RAISES ANY DOUBT WITH REGARD TO THE REASONABLENESS OF THE SAFETY ARGUMENT PUT FORWARD BY THE UNION. IT MUST BE NOTED THAT THIS EVIDENCE TENDERED BY MR. KORING WAS CONTRADICTED IN PART BY THE OTHER COMPANY WITNESS, MR. EUGENE CALHOUN.

MY COLLEAGUES MAKE MUCH ABOUT THE ABSENCE OF EXPERT EVIDENCE, THEY APPEAR TO IGNORE THE EVIDENCE OF MR. NORMAN PIKE, THE UNION'S SAFETY DIRECTOR.

IN THE INSTANT CASE, HOW MUCH MORE COULD REASONABLY BE EXPECTED OF THE UNION IN TERMS OF PRODUCING ANY MORE EVIDENCE WITH REGARD TO THE DANGER INVOLVED IN THIS OPERATION, ITS PARADE OF WITNESSES WHO HAVE FIRST HAND EXPERIENCE OF THE HAZARDS INVOLVED IN THIS JOB, PLUS THE EVIDENCE OF ITS SAFETY DIRECTOR, PLUS A SERIES OF PHOTOGRAPH EXHIBITS OF THE TUNNEL OPERATIONS.

ON THE OTHER HAND, THE APPLICANT COMPANY INSTITUTES THIS PROCEEDING AND PRESENTS TO THE BOARD VERY LIMITED EVIDENCE ON THE ALL IMPORTANT SAFETY ASPECT INVOLVED IN THE DISPUTE.

THE ONUS IN THIS CASE APPEARS TO SHIFT TO THE UNION TO PROVE THAT IT WAS INNOCENT OF THE SERIOUS CHARGES LEVELLED AGAINST THEM, THE ONUS SHOULD PROPERLY FALL ON THE ACCUSER TO PROVE TO THE SATISFACTION OF THE BOARD THAT ITS SERIOUS CHARGES HAD FOUNDATION. THIS IN PARTICULAR, IN LIGHT OF THE PROVISION OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES, WHICH PROVIDES IN ARTICLE 15(B) AS FOLLOWS:

IN CO-OPERATION WITH THE EMPLOYER'S OVERALL PROGRAM OF ACCIDENT CONTROL AND PREVENTION, THE JOB STEWARD MAY REPORT TO THE FOREMAN FOR IMMEDIATE CORRECTIVE ACTION, ANY UNSAFE CONDITIONS, UNSAFE ACTS OR VIOLATION OF SAFETY REGULATIONS. SAFE WORKING CONDITIONS ARE PRIMARILY THE RESPONSIBILITY OF MANAGEMENT,

THEREFORE ALL SUPERVISORY PERSONNEL SHALL BE MADE AWARE OF ALL SAFETY REGULATIONS AND SEE THAT THEY ARE CARRIED OUT.

IN LINE WITH THE FOREGOING PROVISION OF THE AGREEMENT, THE EVIDENCE BEFORE THE BOARD WAS THAT THE SHOP STEWARD (LYONS) REPORTED TO THE FOREMAN THAT THE WITHDRAWAL OF A MAN FROM THE FACE REPRESENTED AN UNSAFE CONDITION.

THE AGREEMENT PROVIDES THAT "SAFE WORKING CONDITIONS ARE PRIMARILY THE RESPONSIBILITY OF MANAGEMENT". THE STEWARD, HAVING RAISED THIS MATTER OF SAFETY WITH THE COMPANY. WHAT WAS THE COMPANY'S ACTION? WE DO NOT KNOW, EXCEPT THAT THEY TOOK THE POSITION THAT THE SITUATION WAS NOT DANGEROUS. SURELY THEY COULD AT LEAST HAVE GONE TO THE DEPARTMENT OF LABOUR SAFETY BRANCH TO HAVE THIS MATTER INVESTIGATED AND SO HAVE EXPERIENCED INDEPENDENT EVIDENCE TO OFFER TO THE BOARD IN SUPPORT OF THEIR SERIOUS CHARGES. IT MIGHT WELL BE SAID THAT THE UNION COULD ALSO HAVE REFERRED THIS MATTER TO THE DEPARTMENT OF LABOUR SAFETY BRANCH, HOWEVER, THE EMPLOYER ARBITRARILY REDUCED THE NUMBER OF MEN AT THE FACE AND THEREBY CREATED THE UNSAFE CONDITION IN THE ESTIMATION OF THE MEN. THE MEN AT THE FACE FELT THAT THEIR LIVES WERE IN DANGER AND COULD THEY REASONABLY BE EXPECTED, UNDER THE CIRCUMSTANCES, TO CONTINUE WORKING AND PROCESS THIS SERIOUS DISPUTE IN THE NORMAL TIME CONSUMING MANNER THROUGH THE REGULAR CHANNELS OF THE GRIEVANCE PROCEDURE AND ULTIMATELY TO ARBITRATION. THE EVIDENCE, IN MY OPINION, CLEARLY DEMONSTRATES THAT THE WORK STOPPAGE WAS A DIRECT CONSEQUENCE OF THE INEPT HANDLING BY MANAGEMENT OF THE COMPLAINTS OF THE EMPLOYEES.

THE EVIDENCE IS QUITE CLEAR THAT THE UNION DID NOT CALL THIS WORK STOPPAGE. THE UNCONTRADICTED EVIDENCE OF LEAD MINER ANTHONY FRANCESCO WAS THAT HE INFORMED HIS SUPERIOR THAT THE CREW WOULD NOT WORK WITH ONE MAN SHORT AT THE FACE BECAUSE OF THE DANGER INVOLVED.

HE STRESSED IN HIS EVIDENCE THAT THIS WAS A DECISION OF THE CREW.

THE UNION DID NOT DENY THAT FACED WITH THIS POSITION OF THE CREW AND BELIEVING THAT THE MEN HONESTLY FELT THEIR LIVES TO BE IN DANGER, THAT THEY SUPPORTED THE POSITION TAKEN BY THE MEN.

THE EVIDENCE OF MR. GALLAGHER, SECRETARY-TREASURER AND BUSINESS MANAGER OF THE UNION, WAS TO THE EFFECT THAT HE MET WITH MR. KORING AND TRIED TO RESOLVE THIS MATTER. MR. KORING REQUESTED MR. GALLAGHER TO GO TO THE MEN AND TRY AND REASON WITH THEM. MR. GALLAGHER COMPLIED WITH THIS REQUEST, AND HIS EVIDENCE WAS THAT HE ASKED THE MEN TO GIVE THE NEW SYSTEM AT LEAST A WEEKS TRIAL. THE MEN SAID NO BECAUSE THEY BELIEVED THEIR LIVES WOULD BE AT STAKE IN THE NEW ARRANGEMENT. MR. GALLAGHER WAS CONVINCED OF THEIR SINCERITY IN THIS MATTER AND RETURNED TO MEET AGAIN WITH MR. KORING, HE EXPLAINED THE POSITION TO MR. KORING AND INVITED MR. KORING TO ACCOMPANY HIM (GALLAGHER) TO A FURTHER MEETING WITH THE MEN. MR. KORING DECLINED THIS INVITATION. MR. GALLAGHER OPENLY ADMITTED THAT ONCE HE WAS CONVINCED THAT THE MEN HONESTLY AND SINCERELY WERE FEARFUL FOR THEIR LIVES, THAT HE SUPPORTED THEM

UNRESERVEDLY. HE SAID HE WOULD NOT ORDER MEN BACK TO WORK UNDER THE CIRCUMSTANCES IN THIS CASE.

THE NAME OF MR. McMULLEN WAS MENTIONED SEVERAL TIMES DURING THE HEARING. MR. GIBSON, COMMERCIAL MANAGER OF THE COMPANY, SAID THAT HE WAS ADVISED BY KORING AND McMULLEN THAT THE NUMBER OF MEN AT THE FACE WAS ADEQUATE FOR SAFETY. MR. KORING MENTIONED MR. McMULLEN DURING HIS TESTIMONY. MR. PIKE, THE UNION'S SAFETY DIRECTOR, MENTIONED THAT AMONG OTHER THINGS MR. McMULLEN SAID THAT THE COMPANY HAD NO MONEY TO PAY FOR THE EXTRA MAN. MR. LYONS, MINER AND SHOP STEWARD, ALSO SAID THAT MR. McMULLEN MENTIONED THE FINANCIAL DIFFICULTY WITH REGARD TO THE EXTRA MAN. THE APPLICANT FAILED TO CALL MR. McMULLEN TO OFFER REBUTTAL EVIDENCE ON THE LACK OF MONEY PLEA, SO WE HAVE UNCONTRADICTED EVIDENCE BEFORE US THAT THE MONEY ARGUMENT WAS ONE OF THE FACTORS INVOLVED IN THE COMPANY'S DECISION TO REDUCE THE NUMBER OF MEN AT THE FACE.

IN PARAGRAPH 24 WHEREIN THE MAJORITY STATE:

WHERE THE SUBJECT IS COMPLEX AND TECHNICAL AND INVOLVES PROBLEMS AND CONSIDERATIONS PECULIAR TO THE WORK BEING REVIEWED, A FORUM THAT IS NOT EXPERT IN THE FIELD CONCERNED CANNOT DETERMINE THE REASONABLENESS OF ANY PARTICULAR POINT OF VIEW ON THE BASIS OF THE SAY SO OF THE ANTAGONISTS. IT MUST HAVE EXPERT EVIDENCE AGAINST WHICH TO MEASURE THE WORTH OF THE CONFLICTING EVIDENCE SO AS TO BE ABLE TO FORMULATE ITS OWN INDEPENDENT JUDGMENT IN THE LIGHT OF THE DISINTERESTED INDEPENDENT TESTIMONY OF THE EXPERT. IN THE INSTANT CASE THERE APPEARED TO BE NO REASON WHATSOEVER WHY INDEPENDENT WITNESSES COULD NOT HAVE BEEN PRODUCED FOR THE ASSISTANCE OF THE BOARD IN WHAT COUNSEL MUST HAVE CLEARLY APPREHENDED WAS A MOST DIFFICULT CASE FROM A NUMBER OF POINTS OF VIEW. IT IS INDEED REGRETTABLE THAT THE BOARD IS CONSTRAINED TO DISPOSE OF THIS WITHOUT THE ENLIGHTENMENT THAT INDEPENDENT EXPERT TESTIMONY MIGHT HAVE PROVIDED. THE PRIMARY ONUS IN THIS REGARD LAY, OF COURSE, UPON THE UNION WHO RAISED THE DEFENCE OF JUSTIFICATION BY REASON OF REASONABLE FEAR.

THE POSITION OF THE MAJORITY IN THIS MATTER IS COMPLETELY AT VARIANCE WITH THAT OF THE UNANIMOUS DECISION OF THE BOARD TAKEN IN THE PIGOTT CONSTRUCTION COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1960, P. 426, IN THIS CASE THE BOARD SAID:

WHERE AN EMPLOYER SEEKS A DECLARATION AGAINST A TRADE UNION UNDER SECTION 50 OF THE LABOUR RELATIONS ACT THAT THE TRADE UNION CALLED OR AUTHORIZED AN UNLAWFUL STRIKE, THE BOARD IS OF THE OPINION THAT THE EMPLOYER MUST ALLEGE AND PROVE AS AN INTEGRAL PART OF ITS CASE THAT THE

TRADE UNION CALLED OR AUTHORIZED A STRIKE OF
EMPLOYEES OF THE EMPLOYER SEEKING THE DECLARATION
AND, OF COURSE, THAT SUCH STRIKE IS UNLAWFUL.
(UNDERLINING IS MINE.)

IN LIGHT OF THE FOREGOING AND WITH REGARD TO THE REASONING OF
THE MAJORITY IN PARAGRAPH 24, IT IS EXTREMELY DIFFICULT FOR ME TO SEE
WHY THE DECISION SHOULD GO TO THE EMPLOYER AND AGAINST THE UNION.

THERE WAS EVIDENCE BEFORE THE BOARD THAT THE APPLICANT EMPLOYER
HAD APPLIED FOR LEAVE TO PROSECUTE THE UNION WITH REGARD TO THIS DISPUTE.
WITH THIS INFORMATION BEFORE US, I WOULD BE INCLINED TO FOLLOW THE REASON-
ING OF THE MAJORITY IN THE ARVO TUOMI CASE, (1953) C.C.H. CANADIAN LABOUR
LAW REPORTER, TRANSFER BINDER '49-'54, ¶17,052, C.L.S. 76-387. THE
MAJORITY IN THIS CASE STATED THE FOLLOWING:

WITHOUT ATTEMPTING TO LAY DOWN ANY EXHAUSTIVE
PRINCIPLE GOVERNING THE EXERCISE OF SUCH
DISCRETION, IT SEEMS TO US THAT THE ISSUANCE
OF A DECLARATION IS AN EXTRAORDINARY REMEDY
AND THAT THE DECLARATION SHOULD BE MADE ONLY
WHERE THERE IS NO EQUALLY CONVENIENT, BENEFICIAL
AND EFFECTUAL REMEDY AVAILABLE TO THE APPLICANT.
HERE NO SUCH REMEDY IS AVAILABLE. THE APPLICANTS
ONLY RECOURSE WOULD BE TO APPLY FOR LEAVE TO
PROSECUTE, A COURSE WHICH HE HAS STUDIOUSLY AVOIDED
AND ONE WHICH IS TO BE RESORTED TO ONLY WITH THE
GREATEST OF CAUTION. IN THESE CIRCUMSTANCES A
DECLARATION UNDER SECTION 59 IS IN ORDER.

IN THE INSTANT CASE THE APPLICANT HAS APPLIED FOR LEAVE TO
PROSECUTE, IT HAS RESORTED TO ANOTHER REMEDY, IN THE CIRCUMSTANCES AND
IN LINE WITH THE ABOVE REASONING, I BELIEVE THE BOARD SHOULD REFRAIN FROM
MAKING A DECLARATION IN THIS CASE.

I HAVE NO DIFFICULTY IN DECIDING, BASED ON THE EVIDENCE PRESENTED
AT THE HEARING, THAT THE EMPLOYEES INVOLVED IN THE INSTANT CASE WITH-
DREW THEIR LABOUR BECAUSE OF THEIR FEAR FOR THEIR LIVES IN THIS DANGEROUS
JOB. I HAVE NO DIFFICULTY, AGAIN BASED ON THE EVIDENCE PRESENTED AT THE
HEARING INTO THIS MATTER, THAT THE FEAR OF THE MEN INVOLVED WAS BASED ON
REASONABLE GROUNDS.

I RESPECTFULLY SUGGEST THAT THE MAJORITY DECISION IN DECLARING
THIS DISPUTE TO BE AN UNLAWFUL STRIKE BY THE RESPONDENT UNION, IS NOT
IN KEEPING EITHER WITH THE EVIDENCE BEFORE THE BOARD OR WITH THE PROPER
INTERPRETATION OF THE BOARD'S DISCRETION UNDER SECTION 67 OF THE
ONTARIO LABOUR RELATIONS ACT.

TO FIND THAT EMPLOYEES WHO ENGAGED IN A WORK STOPPAGE TO PROTECT
THEIR LIVES IS AN UNLAWFUL STRIKE UNDER THE ACT IS TO SET THE CLOCK BACK
ON OUR DEVELOPMENT AS AN ENLIGHTENED AND CIVILIZED SOCIETY. TO INTERPRET

THIS SECTION OF THE ACT IN THE MANNER WHICH THE MAJORITY DID, IS TO ATTRIBUTE TO THE LEGISLATORS OF THE ACT A CALLOUSNESS THAT SURELY CANNOT BE PART OF ANY FREE DEMOCRATIC LEGISLATURE.

IN THE MATTER OF INTERPRETING THIS SECTION OF THE ACT, I WOULD REFER TO THE REASONING OF THE BOARD IN THE HARDING CARPETS CASE, 1956 C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, ¶16,031, C.L.S. 76-487:

IT WOULD NOT BE DIFFICULT TO VISUALIZE MANY OTHER SITUATIONS IN WHICH, OBVIOUSLY, THE LEGISLATURE CANNOT BE TAKEN TO HAVE INTENDED THAT A CONCERTED REFUSAL TO WORK SHOULD BE CONSIDERED TO BE A STRIKE; FOR EXAMPLE, IF EMPLOYEES WERE DIRECTED TO WORK AND REFUSED TO WORK IN AN AREA THAT WAS UNSAFE OR UNDER CONDITIONS WHICH CONSTITUTED A MENACE TO HEALTH. IN SHORT, IT IS IMPLICIT IN THE EXCERPT FROM THE DECISION OF MR. DAVIS QUOTED ABOVE, AND I RESPECTFULLY CONCUR IN HIS OPINION, THAT THE STRICT LITERAL RULE OF STATUTORY INTERPRETATION CANNOT BE APPLIED TO THAT DEFINITION. CONSEQUENTLY, IN CONSTRUING THE TERM "STRIKE" AS DEFINED IN SECTION 1 (1) (H) OF THE LABOUR RELATIONS ACT, RESORT MUST BE HAD TO WHAT HAS BEEN CALLED THE "MISCHIEF" RULE OF STATUTORY INTERPRETATION, WHICH WAS LAID DOWN IN HEYDON'S CASE, (1584) 3 Co. REP. 7B, IN THESE WORDS:

- - - FOR THE SURE AND TRUE INTERPRETATION OF ALL STATUTES IN GENERAL - - - FOUR THINGS ARE TO BE DISCERNED AND CONSIDERED: (1) WHAT WAS THE COMMON LAW BEFORE THE MAKING OF THE ACT, (2) WHAT WAS THE MISCHIEF AND DEFECT FOR WHICH THE COMMON LAW DID NOT PROVIDE, (3) WHAT REMEDY THE PARLIAMENT HAD RESOLVED AND APPOINTED TO CURE THE DISEASE OF THE COMMONWEALTH, (4) THE TRUE REASON OF THE REMEDY. AND THEN THE OFFICE OF ALL THE JUDGES IS ALWAYS TO MAKE SUCH CONSTRUCTION AS SHALL SUPPRESS THE MISCHIEF (AND) ADVANCE THE REMEDY - - - ACCORDING TO THE TRUE INTENT OF THE MAKERS OF THE ACT.

AN EMINENT WRITER, MR. J. WILLIS, PARAPHRASED THE RULE SOME YEARS AGO (STATUTE INTERPRETATION IN A NUTSHELL. (1938) 16 CANADIAN BAR REVIEW 1, 14), AS FOLLOWS:

BEFORE EVER YOU LOOK AT THE WORDS OF THE ACT YOU HAVE TO DISCOVER WHY THE ACT WAS PASSED; THEN, WITH THAT KNOWLEDGE IN YOUR MIND YOU MUST

GIVE THE WORDS UNDER INTERPRETATION THE MEANING WHICH BEST ACCOMPLISHES THE SOCIAL PURPOSE OF THE ACT.

I RESPECTFULLY SUGGEST THAT THE DECISION OF THE MAJORITY, IN THE INSTANT CASE, PLAYS HAVOC WITH THE SOCIAL PURPOSES OF THE ONTARIO LABOUR RELATIONS ACT.

I WOULD HAVE DISMISSED THIS APPLICATION.

INDEXED ENDORSEMENT - SECTION 65

12118-66-U: PRINTING SPECIALTIES & PAPER PRODUCTS UNION LOCAL 466
(COMPLAINANT) v. DATA BUSINESS FORMS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. W. FORGIE.

APPEARANCES AT THE HEARING: LAURENCE C. ARNOLD AND JOHN STEELE FOR THE COMPLAINANT, JOHN P. SANDERSON AND J. D. CORCORAN FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER D. W. FORGIE:
DECEMBER 1, 1966.

1. THE COMPLAINANT HAS APPLIED PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT AND COMPLAINS THAT CHARLES MACKENZIE AND DENIS DEGAGNE WERE DISCHARGED FROM THEIR EMPLOYMENT BY THE RESPONDENT ON AUGUST 15TH, 1966 CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE ACT. THIS MATTER CAME ON FOR HEARING IN THE FIRST INSTANCE ON NOVEMBER 2ND, 1966 AND WAS ADJOURNED FOR ARGUMENT UNTIL NOVEMBER 21ST, 1966 AT THE REQUEST OF THE RESPONDENT. IT APPEARS THAT, IN AN EFFORT TO ORGANIZE THE EMPLOYEES OF THE RESPONDENT, THE APPLICANT CALLED A MEETING FOR THE EVENING OF AUGUST 12TH, 1966 TO BE HELD AT THE CONSTELLATION HOTEL.

2. DURING THE MORNING OF AUGUST 12TH THE PRESIDENT OF THE RESPONDENT CALLED A MEETING OF ALL THE DAY SHIFT EMPLOYEES. WHILE HE COMMENCED HIS ADDRESS TO THE EMPLOYEES BY STATING THAT HE WOULD WELCOME THE UNION INTO THE SHOP HE ASKED THE EMPLOYEES TO WAIT ONE YEAR BEFORE BRINGING THE UNION IN. THE EMPLOYER THEN ENUMERATED CERTAIN EFFECTS WHICH WOULD BE DETRIMENTAL TO THE EMPLOYEES IF THE UNION BECAME THE BARGAINING AGENT OF THE EMPLOYEES. SOME OF THESE EFFECTS WOULD BE THE ELIMINATION OF COFFEE BREAKS, ELIMINATION OF OVERTIME, THE FACT THAT LAYOFFS WOULD OCCUR IN SLACK PERIODS, AND THE PERSONAL TOUCH WHICH THE EMPLOYEES NOW ENJOYED WITH THE COMPANY WOULD BE LOST. IT WAS THE RESPONDENT'S VIEW THAT THE COMPANY COULD NOT AT THIS TIME AFFORD THE UNION. THIS MEETING LASTED APPROXIMATELY ONE HOUR.

3. Mr. DEGAGNE TESTIFIED THAT HE SUPPORTED THE COMPLAINANT UNION'S ATTEMPT TO ORGANIZE THE EMPLOYEES OF THE RESPONDENT AND HAD INVITED FELLOW EMPLOYEES TO THE MEETING WHICH WAS TO BE HELD AT THE CONSTELLATION HOTEL. HE ADMITTED THAT ON HIS RETURN FROM THE WASHROOM ON ONE OCCASION HE STOPPED AT THE COKE MACHINE IN THE LUNCH ROOM WHERE HE PASSED THE TIME OF DAY WITH MR. KILLEEN, A CLEANER, WHO WAS ENGAGED IN SWEEPING THE LUNCH ROOM. MR. DEGAGNE ASKED MR. KILLEEN WHETHER OR NOT HE INTENDED TO ATTEND THE UNION MEETING. MR. KILLEEN DID NOT COMMIT HIMSELF ONE WAY OR THE OTHER AND THERE WAS NO FURTHER MENTION OF THE UNION BY MR. DEGAGNE.

4. ON MONDAY, AUGUST 15TH MR. DEGAGNE WAS SUMMONED TO THE OFFICE OF MR. KNOL THE PLANT SUPERINTENDENT. MR. ANNIS A FOREMAN WAS PRESENT DURING THE INTERVIEW OF MR. KNOL. MR. KNOL TOLD MR. DEGAGNE THAT HE WAS FIRED FOR "SOLICITING VOTES" FOR THE UNION ON COMPANY TIME. MR. KNOL FURTHER ADVISED HIM THAT CERTAIN PEOPLE IN THE SHOP DID NOT WANT THE UNION AND IF THE UNION GOT IN THE PEOPLE WOULD QUIT. IT WAS THEREFORE NECESSARY TO MAKE AN EXAMPLE OF SOMEONE, AND DEGAGNE WAS IT. MR. KNOL TESTIFIED THAT HE HAD NO COMPLAINT WHATSOEVER WITH DEGAGNE'S WORK. APPARENTLY, NO PRIOR WARNING WAS GIVEN TO MR. DEGAGNE BY MR. KNOL AND NO OPPORTUNITY TO EXPLAIN WAS GIVEN.

5. THE EVIDENCE WITH RESPECT TO MR. MACKENZIE WAS THAT HE HAD INVITED THREE FEMALE EMPLOYEES WHO WORKED WITH HIM ON THE NIGHT SHIFT TO ATTEND THE UNION MEETING AT THE CONSTELLATION HOTEL. ONE OF THE FEMALE EMPLOYEES SAID SHE COULD NOT ATTEND BECAUSE HER HUSBAND WAS A MEMBER OF THE R.C.M.P. MR. MACKENZIE THEN PRODUCED A MEMBERSHIP CARD ON THE BACK OF WHICH WAS A NOTATION TO THE EFFECT THAT COMMUNISTS WOULD NOT BE ADMITTED INTO MEMBERSHIP. APART FROM THIS EXCHANGE THERE IS NO EVIDENCE THAT ANY FURTHER MENTION OF THE UNION WAS MADE BY MR. MACKENZIE TO THE THREE WOMEN. ONE OF THE THREE WOMEN IN QUESTION TESTIFIED THAT APART FROM THE INVITATION TO ATTEND THE UNION MEETING NO OTHER MENTION OF THE UNION WAS MADE BY MR. MACKENZIE AND NO THREATS WERE MADE TO HER OR TO ANYONE ELSE IN HER PRESENCE BY MR. MACKENZIE.

6. ON THE EVENING OF AUGUST 15TH MR. MACKENZIE, WITHOUT PRIOR WARNING, WAS SUMMONED TO THE OFFICE OF THE PRESIDENT IN THE PRESENCE OF MR. KNOL AND MR. HALL A FOREMAN, AND WAS ADVISED BY THE PRESIDENT THAT HE WAS DISCHARGED FOR "SOLICITING VOTES" ON COMPANY TIME AND FOR HAVING ATTEMPTED TO USE "STRONG-ARM METHODS" ON THE THREE GIRLS. MR. MACKENZIE DENIED USING STRONG-ARM METHODS AND REQUESTED THAT THE THREE GIRLS BE BROUGHT INTO THE OFFICE TO CONFRONT HIM. THE RESPONDENT'S PRESIDENT REFUSED THIS SUGGESTION. MR. MACKENZIE WAS THEN ESCORTED TO HIS WORK STATION WHERE HE WAS ALLOWED TO PICK UP HIS TOOLS AND WAS THEN LED TO THE DOOR BY MR. HALL. WHILE MR. HALL WAS LEADING MR. MACKENZIE OUT OF THE PLANT MR. HALL SAID TO MR. KNOL, IN REFERENCE TO THE MANNER IN WHICH MR. MACKENZIE WAS DISCHARGED THAT IT WAS "ONE OF THE DIRTIEST TRICKS HE HAD EVER SEEN PLAYED". THERE WAS NO SERIOUS CRITICISM OF THE WORK OF MR. MACKENZIE, BUT ON THE CONTRARY, HE WAS DESCRIBED BY MR. KNOL AS A VERY ENTHUSIASTIC WORKER AND WAS "ALWAYS RARING TO GO".

7. THERE WAS NO EVIDENCE THAT EITHER MACKENZIE OR DEGAGNE HAD TRIED TO SIGN MEMBERS OF THE UNION ON COMPANY TIME.

8. IN THE INSTANT CASE, THERE WAS NO EVIDENCE THAT ANY OPPORTUNITY WAS GIVEN TO THE AGGRIEVED PERSONS TO EXPLAIN THEIR ACTIVITIES NOR WAS ANY WARNING GIVEN IN AN ATTEMPT TO CAUSE THEM TO DESIST. THERE WAS NO EVIDENCE THAT THE ACTIVITIES OF THE AGGRIEVED PERSONS HAD CAUSED DISSENT AMONG THE EMPLOYEES OF THE RESPONDENT APART FROM THE ALLEGATION MADE AT THE TIME OF DISCHARGE OF DEGAGNE, WHICH ALLEGATION WAS NOT SUPPORTED BY EVIDENCE IN THIS CASE. THERE WAS NO EVIDENCE THAT THERE WAS ANY INTERFERENCE WITH THE QUALITY OR QUANTITY OF PRODUCTION, CUSTOMER RELATIONS, SAFETY REGULATIONS, PLANT RULES OR OTHER RELATED FACTORS WHICH THE RESPONDENT WOULD HAVE BEEN JUSTIFIED IN PROTECTING.

9. THE RESPONDENT TOOK THE POSITION THAT THEY WERE ENTITLED TO DISCHARGE THE AGGRIEVED PERSONS PURSUANT TO THE PROVISIONS OF SECTION 53 OF THE ACT. SECTION 53 OF THE ACT READS AS FOLLOWS:-

NOTHING IN THIS ACT AUTHORIZES ANY PERSON TO ATTEMPT AT THE PLACE AT WHICH AN EMPLOYEE WORKS TO PERSUADE HIM DURING HIS WORKING HOURS TO BECOME OR REFRAIN FROM BECOMING OR CONTINUING TO BE A MEMBER OF A TRADE UNION.

10. IN THE McNAIR PRODUCTS COMPANY LIMITED CASE, BOARD FILE NO. 12211-66-U, OCTOBER 19TH, 1966, THE BOARD STATED AS FOLLOWS:

WHEN ATTEMPTING TO DETERMINE WHETHER THE STEPS TAKEN BY AN EMPLOYER TO PUT AN END TO PERSUASION BY EMPLOYEES DURING WORKING HOURS TO CAUSE OTHER EMPLOYEES TO BECOME MEMBERS OF A TRADE UNION, ARE TAKEN IN GOOD FAITH PURSUANT TO THE PROVISIONS OF SECTION 53 OF THE ACT OR ARE TAKEN PRIMARILY TO THWART THE EMPLOYEES' ATTEMPT TO JOIN A TRADE UNION OF THEIR OWN CHOICE, IT IS OFTEN VERY REVEALING TO LOOK AT THE NATURE OF THE DISCIPLINARY ACTION TAKEN. QUITE OBVIOUSLY, A WARNING TO SUCH EMPLOYEES WOULD BE SUFFICIENT TO ACCOMPLISH THE EMPLOYER'S PURPOSES IN MOST CASES. A SUSPENSION MAY BE NECESSARY IN OTHER CASES WHERE THE WARNING IS IGNORED OR THERE IS REAL INTERFERENCE WITH PRODUCTION OR PLANT DISCIPLINE. IN EXTREME CIRCUMSTANCES IT MAY WELL BE THAT THE DISCHARGE OF EMPLOYEES IS THE ONLY WAY TO PUT AN END TO THE PRACTICE. WHERE, HOWEVER, THE EXTREME REMEDY IS ADOPTED WITHOUT SO MUCH AS A PRIOR CAUTION, EVEN IN THE FORM OF A PLANT RULE TO THAT EFFECT, A DOUBT IS CREATED AS TO THE TRUE INTENTIONS OF THE EMPLOYER.

11. HAVING REGARD TO ALL THE EVIDENCE IN THIS CASE AND THE DECISION OF THE BOARD IN THE McNAIR PRODUCTS COMPANY CASE, THE BOARD IS OF OPINION THAT THE RESPONDENT HEREIN WAS INDEED ATTEMPTING TO USE SECTION 53 AS A SWORD RATHER THAN A SHIELD, AND THE EMPLOYER IN DISCHARGING THE TWO AGGRIEVED PERSONS WAS NOT ACTING IN A BONA FIDE MANNER. AS STATED IN THE BARBARA JARVIS AND ASSOCIATED MEDICAL SERVICES INCORPORATED CASE, CCH CANADIAN LABOUR LAW CASES, 1960-1964, ¶16218, SECTION 53 OF THE ACT IS INTENDED TO PROVIDE THE EMPLOYER WITH "AUTHORITY TO MAINTAIN ORDER ON HIS PREMISES AND TO ENSURE THAT PRODUCTION WILL NOT SUFFER". IN THE INSTANT CASE, HAVING REGARD TO THE FACT THAT THE MEETING TO WHICH THE EMPLOYEES WERE INVITED HAD ALREADY TAKEN PLACE AND THAT THERE WAS NO EVIDENCE THAT THERE WAS ANY OTHER UNION ACTIVITY APART FROM ISSUING AN INVITATION TO THAT MEETING, IT IS READILY APPARENT THAT THE RESPONDENT'S MAIN CONCERN HAD NOTHING TO DO WITH MAINTAINING ORDER ON ITS PREMISES OR ENSURING THAT PRODUCTION WOULD NOT SUFFER. ON THE CONTRARY, WE ARE COMPELLED TO FIND THAT HIS CONCERN WAS DIRECTED TO THWARTING THE COMPLAINANT'S ATTEMPT TO ORGANIZE THE RESPONDENT'S EMPLOYEES AND TO PREVENT THE SELECTION BY THE EMPLOYEES OF A BARGAINING AGENT OF THEIR OWN CHOICE WHICH IS A RIGHT THEY ENJOY UNDER SECTION 53 OF THE ACT. THE RESPONDENT'S ACTIONS IN THIS CASE WERE THEREFORE CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE ACT.

12. THE BOARD THEREFORE DETERMINES THAT CHARLES MACKENZIE AND DENIS DEGAGNE WERE DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE ACT. MR. DEGAGNE ADVISED THE BOARD THAT WHILE HE WAS CLAIMING COMPENSATION, HE DID NOT WISH TO BE REINSTATED IN HIS EMPLOYMENT. THE BOARD DIRECTS THAT THE RESPONDENT PAY TO DENIS DEGAGNE THE SUM OF \$152.00 IN FULL PAYMENT OF HIS LOSS OF EARNINGS AND EMPLOYMENT BENEFITS SUSTAINED BY HIM BY REASON OF HIS HAVING BEEN DISCHARGED BY THE RESPONDENT CONTRARY TO THE ACT.

13. THE BOARD FURTHER DETERMINES THAT CHARLES MACKENZIE BE REINSTATED FORTHWITH TO THE POSITION HELD BY HIM AT THE TIME OF HIS DISCHARGE. THE BOARD FURTHER DIRECTS THAT THE RESPONDENT PAY TO CHARLES MACKENZIE THE SUM OF \$106.00 BEING THE AMOUNT OF HIS LOSS OF EARNINGS AND EMPLOYMENT BENEFITS SUSTAINED BY HIM BY REASON OF HIS HAVING BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN THE DATE OF HIS DISCHARGE AND NOVEMBER 2ND, 1966 THE DATE OF THE FIRST HEARING IN THIS MATTER.

14. THE BOARD FURTHER DIRECTS THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF THE LOSS OF EARNINGS AND EMPLOYMENT BENEFITS THAT CHARLES MACKENZIE SUSTAINED BY REASON OF HIS HAVING BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN NOVEMBER 2ND, 1966 AND THE DATE OF HIS REINSTATEMENT.

15. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO IN PARAGRAPH 14 HEREOF WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD WHICH THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A HEARING AT WHICH THE PARTIES WILL HAVE AN OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO ANY ADDITIONAL AMOUNT TO BE PAID TO CHARLES MACKENZIE.

DECISION OF BOARD MEMBER H. F. IRWIN:

DECEMBER 1, 1966.

WHILE, IN THE CIRCUMSTANCES OF THIS CASE, I AGREE WITH THE UNTIMATE RESULT OF THE DECISION OF THE BOARD I CANNOT AGREE WITH ALL THE REASONS THEREFOR.

IF I HAD BEEN SATISFIED ON THE EVIDENCE BEFORE THE BOARD THAT THE CONDUCT OF THE TWO EMPLOYEES, CHARLES MACKENZIE AND DENIS DEGAGNE, CAME WITHIN THE PROVISIONS OF SECTION 53 OF THE LABOUR RELATIONS ACT, I WOULD HAVE DISMISSED THE APPLICATION.

THE BOARD HAS NO JURISDICTION TO ASSESS THE DEGREE OF DISCIPLINARY MEASURES TAKEN BY THE EMPLOYER IF THE ACTIONS OF THE DISCIPLINED EMPLOYEES FALL WITHIN THE PROVISIONS OF SECTION 53 OF THE ACT.

INDEXED ENDORSEMENT - SECTION 47(A)

12220-66-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. WESTEEL PRODUCTS LIMITED; ROSCO METAL PRODUCTS LIMITED; WESTEEL-ROSCO LIMITED; UNITED STEELWORKERS OF AMERICA (RESPONDENTS).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. W. FORGIE.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND GORDON PARKER FOR THE APPLICANT, IAN SCOTT, KEN LEVACK AND PETER COMPELL FOR THE RESPONDENTS.

DECISION OF THE BOARD: DECEMBER 15, 1966.

1. THIS IS AN APPLICATION FOR RELIEF PURSUANT TO SECTION 47A OF THE LABOUR RELATIONS ACT.
2. WESTEEL PRODUCTS LIMITED (HEREINAFTER REFERRED TO AS WESTEEL) IN THE PERIOD PRIOR TO 1965 HAD TWO PLANTS IN METROPOLITAN TORONTO. ONE LOCATED ON ENTERPRISE ROAD IN REXDALE MANUFACTURES TRUCK TANKS. THE OTHER LOCATED ON ATLANTIC AVENUE IN TORONTO MANUFACTURED SHEET METAL PRODUCTS.
3. IN THIS PERIOD THE APPLICANT (HEREINAFTER REFERRED TO AS THE UAW) REPRESENTED THE EMPLOYEES OF WESTEEL AT THE TWO PLANTS. THE LAST COLLECTIVE AGREEMENT BETWEEN THEM EXPIRED ON OCTOBER 31ST, 1964. THE PARTIES THEREUPON EXECUTED A MEMORANDUM OF SETTLEMENT ON NOVEMBER 27TH, 1964. DESPITE EFFORTS MADE BY THE UAW, THE SETTLEMENT HAS NEVER BEEN INCORPORATED INTO A COLLECTIVE AGREEMENT. THE UAW, HOWEVER, HAS CONTINUED TO THE PRESENT TIME, UNDER THE TERMS OF THE SETTLEMENT, TO REPRESENT THE EMPLOYEES AT THE ENTERPRISE ROAD PLANT.
4. ROSCO METAL PRODUCTS LIMITED (HEREINAFTER REFERRED TO AS ROSCO) IN THE PERIOD PRIOR TO 1965 ALSO HAD TWO LOCATIONS IN METROPOLITAN TORONTO. ONE IS A PLANT ON BROCKPORT ROAD IN REXDALE WHERE ROSCO

FABRICATES SHEET METAL. THE OTHER LOCATION WAS A STORAGE WAREHOUSE ON DUPON STREET IN TORONTO.

5. FOLLOWING CERTIFICATION BY THE BOARD, ROSCO AND THE UNITED STEELWORKERS OF AMERICA (HEREINAFTER REFERRED TO AS STEEL) ENTERED INTO A COLLECTIVE AGREEMENT COVERING ALL ROSCO EMPLOYEES IN METROPOLITAN TORONTO. THE DURATION CLAUSE PROVIDES THAT THE AGREEMENT IS TO REMAIN IN EFFECT FROM JUNE 14TH, 1964 TO JUNE 14TH, 1967. IN DECEMBER OF 1965 ROSCO ACQUIRED A PLANT ON BELFIELD ROAD, THE EMPLOYEES OF WHICH HAVE BEEN REPRESENTED BY STEEL UNDER THE COLLECTIVE AGREEMENT SINCE ITS ACQUISITION.

6. AS OF THE CLOSE OF BUSINESS ON DECEMBER 31ST, 1964, WESTEEL ACQUIRED THE OUTSTANDING SHARES OF ROSCO WHICH MADE ROSCO A WHOLLY OWNED SUBSIDIARY OF WESTEEL. ALTHOUGH THE TWO COMPANIES REMAINED AS SEPARATE CORPORATE ENTITIES DURING ALL OF 1965 AND MAINTAINED SEPARATE BOOKS AND PAYROLLS, THE MANAGEMENTS OF THE TWO COMPANIES WERE INTEGRATED AND THEIR OPERATIONS WERE MERGED. WHILE THE POLICY OF THE COMPANIES DURING THIS PERIOD WAS CONTROLLED BY THE BOARD OF DIRECTORS OF WESTEEL, THE BOARD OF DIRECTORS OF ROSCO CONTINUED TO FUNCTION FOR THE PURPOSE OF AUTHORIZING CERTAIN LEGAL TRANSACTIONS AFFECTING THE COMPANY DURING THE COURSE OF THE YEAR.

7. EARLY IN THE SUMMER OF 1965 ROSCO ACQUIRED A PLANT IN OAKVILLE OWNED BY COLUMBIA METAL ROLLING MILLS LIMITED WHICH HAD BEEN A WHOLLY OWNED SUBSIDIARY OF WESTEEL. WITH EXCEPTION OF THE OPERATING ENGINEER WHO WAS EMPLOYED IN THE BOILER ROOM, ALL OF THE EMPLOYEES OF WESTEEL EMPLOYED AT THE ATLANTIC AVENUE PLANT WERE EITHER TRANSFERRED TO THE ROSCO PLANT AT OAKVILLE OR THE WESTEEL PLANT ON ENTERPRISE ROAD. AT ABOUT THE SAME TIME ROSCO CLOSED DOWN ITS DUPONT STREET WAREHOUSE AND TRANSFERRED ALL TWELVE OF ITS EMPLOYEES AT THAT LOCATION TO THE PLANT ON ATLANTIC AVENUE VACATED BY WESTEEL. ROSCO SINCE OCCUPYING THE ATLANTIC AVENUE PREMISES HAS USED IT AS A WAREHOUSE. THE OPERATING ENGINEER HAS CONTINUED HIS EMPLOYMENT TO THE PRESENT TIME IN THE BOILER ROOM OF THE PLANT. WESTEEL CONTINUED TO OWN THE ATLANTIC AVENUE PROPERTY, HOWEVER, AN ALLOWANCE FOR THE USE OF THE PREMISES BY ROSCO IS REFLECTED IN A BOOK TRANSACTION AGAINST THE ASSETS OF ROSCO.

8. STEEL HAS CONTINUED TO ACT AS BARGAINING AGENT FOR THE EMPLOYEES OF ROSCO WHO WERE TRANSFERRED TO ATLANTIC AVENUE UNDER THE TERMS OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN STEEL AND ROSCO AND THE EMPLOYEES CONTINUED DURING ALL OF 1965 TO BE PAID BY ROSCO. UNTIL THE END OF 1965, THE OPERATING ENGINEER AT ATLANTIC AVENUE CONTINUED TO BE REPRESENTED BY THE UAW UNDER THE MEMORANDUM OF SETTLEMENT EXECUTED BY WESTEEL AND THE UAW AND HE REMAINED ON THE WESTEEL PAYROLL DURING THAT PERIOD.

9. AS OF THE CLOSE OF BUSINESS ON DECEMBER 31ST, 1965, AN AMALGAMATION OF ROSCO AND WESTEEL WAS EFFECTED IN ACCORDANCE WITH THE PROVISIONS OF THE CANADA CORPORATIONS ACT. THE AMALGAMATION RESULTED IN THE COMING INTO BEING OF A NEW CORPORATE ENTITY KNOWN AS WESTEEL-ROSCO LIMITED WHICH

ACQUIRED ALL OF THE BUSINESS AND ASSETS OF WESTEEL AND ROSCO. SINCE THE DATE OF AMALGAMATION, STEEL HAS CONTINUED TO REPRESENT THE FORMER EMPLOYEES OF ROSCO AT THE PLANTS ON BROCKPORT ROAD, BELFIELD ROAD, AND ON ATLANTIC AVENUE, WITH THE EXCEPTION OF THE OPERATING ENGINEER. THE UAW HAS CONTINUED TO REPRESENT THE FORMER EMPLOYEES OF WESTEEL AT THE PLANT ON ENTERPRISE ROAD. FOLLOWING CERTIFICATION BY THE BOARD IN MAY OF 1966, THE UAW BECAME THE BARGAINING AGENT FOR THE EMPLOYEES OF WESTEEL-ROSCO LIMITED AT THE OAKVILLE PLANT.

10. THE UAW AFTER THE AMALGAMATION CONTINUED TO REPRESENT THE OPERATING ENGINEER AT ATLANTIC AVENUE. SOME TIME IN THE SPRING OF 1966, HOWEVER, THE OPERATING ENGINEER STARTED TO RECEIVE THE WAGE RATE FOR HIS CLASSIFICATION PAID UNDER THE COLLECTIVE AGREEMENT BETWEEN STEEL AND ROSCO RATHER THAN THE RATE HE FORMERLY RECEIVED BY THE TERMS OF THE MEMORANDUM OF SETTLEMENT BETWEEN THE UAW AND WESTEEL. AT ABOUT THE SAME TIME WESTEEL-ROSCO LIMITED BEGAN TO PAY HIS DUES CHECK-OFF TO STEEL RATHER THAN TO THE UAW.

11. COUNSEL FOR THE UAW SUBMITS THAT THE AMALGAMATION OF WESTEEL AND ROSCO TO FORM WESTEEL-ROSCO LIMITED CONSTITUTES THE SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT. HE FURTHER SUBMITS THAT THE CIRCUMSTANCES OF THE INSTANT CASE FALL WITHIN THE PURVIEW OF SUBSECTION (2) OF SECTION 47A. COUNSEL REQUESTS THAT THE BOARD, IN THE EXERCISE OF ITS DISCRETION, SHOULD DIRECT THE TAKING OF A VOTE BETWEEN THE UAW AND STEEL AMONG THE EMPLOYEES OF WESTEEL-ROSCO LIMITED AT ITS ATLANTIC AVENUE PLANT IN ORDER TO DETERMINE WHICH OF THE TWO TRADE UNIONS IS ENTITLED TO REPRESENT THE EMPLOYEES AT THAT LOCATION.

12. COUNSEL FOR STEEL, ON THE OTHER HAND, SUBMITS THAT THE AMALGAMATION OF WESTEEL AND ROSCO INTO WESTEEL-ROSCO LIMITED DOES NOT CONSTITUTE THE SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE ACT. HE FURTHER SUBMITS THAT EVEN ASSUMING THERE WAS SUCH A SALE, THE FACTS OF THE INSTANT CASE DO NOT FALL WITHIN THE PURVIEW OF SUBSECTION (2) OF SECTION 47A. ACCORDINGLY, HE ARGUES THAT NO RELIEF IS AVAILABLE TO THE APPLICANT UNDER THE POWERS GIVEN TO THE BOARD IN OTHER SUBSECTIONS. ALTERNATIVELY, COUNSEL ARGUES THAT IN LIGHT OF THE BOARD'S DECISION IN THE ALLIANCE DAIRY LIMITED CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1966, P. 336, THE BOARD IN ITS DISCRETION SHOULD NOT DIRECT THE TAKING OF A REPRESENTATION VOTE AS REQUESTED BY THE UAW.

13. PLACING THE APPLICANT IN ITS MOST FAVOURABLE POSITION, LET US ASSUME FOR PURPOSES OF ARGUMENT THAT THE AMALGAMATION OF WESTEEL AND ROSCO TO FORM WESTEEL-ROSCO LIMITED CONSTITUTES THE SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE ACT. FIRST OF ALL, COUNSEL FOR STEEL ASSERTED, AND COUNSEL FOR THE UAW APPEARED TO CONCEDE, THAT NO REMEDY IS AVAILABLE TO THE UAW UNDER SUBSECTION (5) OF SECTION 47A.

IN OUR VIEW, SUBSECTION (5) ENVISAGES THAT EMPLOYEES OF THE BUSINESS THAT IS PURCHASED AND EMPLOYEES OF A BUSINESS OR BUSINESSES ALREADY OWNED BY THE PURCHASER ARE INTERMINGLED AFTER THE DATE OF THE PURCHASE. IN THE INSTANT CASE THERE WAS NO INTERMINGLING OF EMPLOYEES AFTER THE DATE OF THE AMALGAMATION. THE BOARD ACCORDINGLY FINDS THAT SUBSECTION (5) HAS NO APPLICATION.

14. THE WORDING OF SUBSECTION (2) OF SECTION 47A CONTEMPLATES THE EXISTENCE OF A PREDECESSOR EMPLOYER AND A SUCCESSOR EMPLOYER. IT ALSO ENVISAGES THAT THE TRADE UNION WHICH HELD THE BARGAINING RIGHTS FOR A UNIT OF EMPLOYEES OF THE PREDECESSOR EMPLOYER CONTINUES TO HOLD THOSE RIGHTS WITH THE SUCCESSOR EMPLOYER IN THE LIKE BARGAINING UNIT. ARGUMENT WAS ADVANCED AS TO WHETHER IN THE CONTEXT OF THE SUBSECTION WESTEEL AND ROSCO CAN BE CONSIDERED TO BE THE PREDECESSOR EMPLOYER AND WESTEEL-ROSCO LIMITED THE SUCCESSOR EMPLOYER. WITHOUT DEALING WITH THE ARGUMENTS RAISED, AGAIN LET US ASSUME FOR THE PURPOSES OF ARGUMENT THAT THE AMALGAMATION FALLS WITHIN THE PURVIEW OF THE SUBSECTION (2)

15. WESTEEL-ROSCO LIMITED HAS RECOGNIZED THE UAW AND STEEL AS BARGAINING AGENT FOR THOSE EMPLOYEES OF THE COMPANY FOR WHOM THE TWO UNIONS HAD HELD THE BARGAINING RIGHTS WHEN THE EMPLOYEES CONCERNED WERE EMPLOYEES OF WESTEEL AND ROSCO PRIOR TO THE AMALGAMATION. THE ONLY CONFLICTING CLAIMS OF THE TWO UNIONS ARE WITH RESPECT TO THE BARGAINING RIGHTS FOR THOSE EMPLOYEES OF WESTEEL-ROSCO LIMITED EMPLOYED AT THE ATLANTIC AVENUE PREMISES.

16. SUBSECTION (7) OF SECTION 47A PROVIDES INTER ALIA THAT BEFORE DISPOSING OF AN APPLICATION UNDER THE SECTION THE BOARD MAY HOLD SUCH REPRESENTATION VOTES AS IT DEEMS APPROPRIATE. IN CONSIDERING THE REQUEST OF COUNSEL FOR THE UAW FOR THE TAKING OF A REPRESENTATION VOTE WE ARE NOT UNMINDFUL OF THE FACT THAT THE SOLE BASIS UPON WHICH THE UAW RESTS ITS CLAIM TO REPRESENT THE EMPLOYEES OF WESTEEL-ROSCO LIMITED AT ATLANTIC AVENUE IS THAT THE UAW CONTINUED TO BE THE BARGAINING AGENT FOR ONE FORMER EMPLOYEE OF WESTEEL WHOM ROSCO HIRED WHEN IT TOOK OVER THE PREMISES AT ATLANTIC AVENUE AND TRANSFERRED ITS ENTIRE WAREHOUSING STAFF FROM DUPONT STREET TO THAT LOCATION. IMMEDIATELY PRIOR TO THE AMALGAMATION ROSCO EMPLOYED TWELVE EMPLOYEES AT ATLANTIC AVENUE WHO WERE REPRESENTED BY STEEL.

17. IN THE ALLIANCE DAIRY LIMITED CASE (SUPRA) THERE HAD BEEN A SALE OF A BUSINESS PURSUANT TO SECTION 47A. THE NEW BARGAINING UNIT WHICH THE BOARD FOUND TO BE APPROPRIATE ENCOMPASSED EMPLOYEES FOR WHOM TWO TRADE UNIONS HAD PREVIOUSLY HELD THE BARGAINING RIGHTS. THE UNION WHICH ONLY REPRESENTED 14% OF THE EMPLOYEES IN THE UNIT REQUESTED THE TAKING OF A REPRESENTATION VOTE. THE REMAINDER OF THE EMPLOYEES IN THE UNIT HAD BEEN REPRESENTED BY THE OTHER UNION. BECAUSE OF THE LARGE DISPARITY BETWEEN THE NUMBER OF EMPLOYEES REPRESENTED BY THE TWO UNIONS THE BOARD DENIED THE REQUEST FOR A VOTE MADE BY THE UNION REPRESENTING ONLY 14% OF THE EMPLOYEES IN THE UNIT AND DECLARED THAT THE TRADE UNION REPRESENTING THE GREAT MAJORITY OF THE EMPLOYEES IN THE UNIT TO BE THE BARGAINING AGENT FOR ALL OF THE EMPLOYEES IN THE UNIT.

18. ALTHOUGH IN THE ALLIANCE DAIRY LIMITED CASE THE BOARD DID NOT DEFINE THE MINIMUM PROPORTION OF EMPLOYEES THAT A TRADE UNION MUST REPRESENT IN ORDER TO BE ENTITLED TO A REPRESENTATION VOTE, ON A PERCENTAGE RATIO, THE DISPARITY THAT EXISTS IN THE INSTANT CASE IS EVEN GREATER THAN IN THE FORMER CASE. WHILE THE FACTS OF THE ALLIANCE DAIRY LIMITED CASE ARE NOT ON ALL FOURS WITH THE PRESENT APPLICATION, BY ANALOGY THE SAME PRINCIPLE IS APPLICABLE. ACCORDINGLY, EVEN ASSUMING THAT THERE WAS A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A, THE BOARD WOULD NOT GRANT THE RELIEF SOUGHT BY THE APPLICANT.

19. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

INDEXED ENDORSEMENT - SECTION 79(2)

11816-66-M: LOCAL 4509, UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ALGOMA STEEL CORPORATION LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: LORNE INGLE, ANDREW GLIBOTA AND BURRIS ORMSBY FOR THE APPLICANT, C. A. MORLEY, N. M. KENSIT AND DAVID M. FARRELL FOR THE RESPONDENT.

DECISION OF J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER:

DECEMBER 15, 1966.

1. THIS APPLICATION IS MADE PURSUANT TO SECTION 79(2) OF THE LABOUR RELATIONS ACT. THE APPLICANT IS SEEKING A DETERMINATION BY THE BOARD AS TO WHETHER CERTAIN NAMED PERSONS IN THE EMPLOY OF THE RESPONDENT, LISTED ON A SCHEDULE FILED WITH THE APPLICATION, ARE EMPLOYEES WITHIN THE MEANING OF THE ACT.

2. THE APPLICANT AND THE RESPONDENT HAVE BEEN PARTIES TO A SERIES OF COLLECTIVE AGREEMENTS FOR MANY YEARS. THE DURATION OF THE AGREEMENT WHICH WAS IN EFFECT WHEN THIS APPLICATION WAS MADE WAS FROM AUGUST 1ST, 1964 TO JULY 31ST, 1966. BY THE RECOGNITION CLAUSE OF ALL OF THE AGREEMENTS THE RESPONDENT HAS RECOGNIZED THE APPLICANT AS BARGAINING AGENT FOR ALL CLERICAL AND TECHNICAL EMPLOYEES AS DEFINED BY THE BOARD'S CERTIFICATE DATED JANUARY 28TH, 1952. AS OF THE DATE OF THE BOARD HEARING IN THIS MATTER, NOVEMBER 9TH, 1966, THE PARTIES HAD EXECUTED A MEMORANDUM OF AGREEMENT AS THE BASIS OF A NEW COLLECTIVE AGREEMENT. DURING THE NEGOTIATIONS FOR THE NEW AGREEMENT THE PARTIES DID NOT DEAL WITH THE PERSONS WHO ARE THE SUBJECT OF THE APPLICATION PENDING A DECISION OF THE BOARD.

3. THE APPLICANT MADE A PREVIOUS APPLICATION PURSUANT TO SECTION 79(2) IN THE SPRING OF 1965 INVOLVING SUBSTANTIALLY THE SAME PERSONS WITH WHOM WE ARE CONCERNED IN THE INSTANT APPLICATION. AT THE HEARING OF THAT APPLICATION, THE APPLICANT ADMITTED THAT THE APPLICATION WAS PREMATURE SINCE THE PARTIES HAD NOT DISCUSSED THE PERSONS AND CATEGORIES ON THE LIST FILED WITH THE APPLICATION. THE APPLICANT PROPOSED THAT THE BOARD HEAR THE APPLICATION AND THAT THE PARTIES THEN MEET AND DISCUSS THE PERSONS CONCERNED AND THAT AFTER SUCH DISCUSSIONS THE APPLICANT WOULD SUBMIT A REVISED LIST CONTAINING THE NAMES OF THE PERSONS STILL IN DISPUTE. THE RESPONDENT AGREED TO THE APPLICANT'S PROPOSAL, PROVIDED THE BOARD FOUND THAT THE APPLICANT WAS ENTITLED TO THE RELIEF THAT IT WAS SEEKING, AND WAIVED ANY OBJECTION TO THE PREMATUREITY OF THE APPLICATION. AFTER HEARING THE APPLICATION ON ITS MERITS THE BOARD CONCLUDED THAT IT WAS NOT ABLE TO MAKE A DETERMINATION AS TO WHETHER THE APPLICANT WAS ENTITLED TO RELIEF UNDER SECTION 79(2) UNTIL IT RECEIVED THE REVISED LIST OF THE PERSONS IN DISPUTE. THE REGISTRAR SO NOTIFIED THE PARTIES BY LETTER AND DIRECTED THEM TO REPORT THEIR PROGRESS TO THE BOARD. AT THIS POINT, THE RESPONDENT REFUSED TO MEET WITH THE APPLICANT ON THE GROUNDS THAT TO DO SO WOULD INVOLVE AN ADMISSION THAT THERE WAS AN ISSUE BETWEEN THE PARTIES AS TO WHETHER THE PERSONS CONCERNED WERE EMPLOYEES FOR PURPOSES OF THE ACT. THE RESPONDENT THEREFORE STATED THAT IT WAS NOT PREPARED TO DISCUSS THE LIST UNTIL SUCH TIME AS THE BOARD MADE A RULING ON THE EVIDENCE BEFORE IT. THE BOARD IN ITS DECISION (SEE THE ALGOMA STEEL CORPORATION LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1965, P. 411) NOTED THAT IT HAD HEARD THE APPLICATION ON ITS MERITS ON THE BASIS OF THE RESPONDENT'S AGREEMENT TO MEET WITH THE APPLICANT AND DRAW UP A REVISED LIST OF THE PERSONS IN DISPUTE. THE BOARD HELD THAT SINCE THE AGREEMENT OF THE PARTIES WAS THE SOLE BASIS UPON WHICH IT HAD ENTERTAINED THE APPLICATION AND THAT AGREEMENT NO LONGER EXISTED, THE APPLICANT HAD NOT CURED THE DEFECT IN ITS APPLICATION, NAMELY ITS PREMATUREITY. THE BOARD ACCORDINGLY TERMINATED THE APPLICATION.

4. BY LETTER DATED MARCH 4TH, 1966 THE APPLICANT AGAIN REQUESTED THAT THE RESPONDENT INFORM THE APPLICANT WHETHER IT WAS PREPARED TO AGREE THAT THE PERSONS IN THE OCCUPATIONAL CLASSIFICATIONS LISTED ON THE SCHEDULE REFERRED TO ABOVE ARE EMPLOYEES WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. BY LETTER IN REPLY DATED MARCH 24TH, 1966, THE RESPONDENT TOOK THE POSITION THAT IT WAS NOT PREPARED TO COMPLY WITH THE APPLICANT'S REQUEST AS THERE WAS NO ISSUE BETWEEN THE PARTIES AS TO WHETHER THE NAMED PERSONS WERE EMPLOYEES FOR THE PURPOSES OF THE ACT. THE APPLICANT THEREUPON MADE THE INSTANT APPLICATION TO THE BOARD.

5. THE APPLICANT SUBMITS THAT A QUESTION HAS ARISEN DURING THE OPERATION OF THE COLLECTIVE AGREEMENT BETWEEN THEM AS TO WHETHER THE PERSONS ON THE SCHEDULE ARE EMPLOYEES WITHIN THE MEANING OF THE ACT AND THAT ACCORDINGLY IT IS ENTITLED TO THE RELIEF WHICH IT IS SEEKING PURSUANT TO SECTION 79(2). THE RESPONDENT SUBMITS THAT THE REAL ISSUE BETWEEN THE PARTIES IS WHETHER OR NOT THE PERSONS IN QUESTION FALL WITHIN THE SCOPE OF THE BARGAINING UNIT DEFINED BY THE BOARD AND THAT THIS IS A MATTER FOR

DETERMINATION IN ACCORDANCE WITH THE GRIEVANCE PROCEDURE ESTABLISHED IN THE COLLECTIVE AGREEMENT AND THE "MANUAL" WHICH IS AN APPENDIX TO THE AGREEMENT.

6. THE BOARD HAS RECOGNIZED THAT THE QUESTION WHETHER A PERSON IS COVERED BY A COLLECTIVE AGREEMENT AND THE QUESTION AS TO WHETHER A PERSON IS AN EMPLOYEE FOR THE PURPOSES OF THE ACT ARE TWO SEPARATE ISSUES. THE BOARD HAS FURTHER RECOGNIZED THAT THE FORMER QUESTION IS PROPERLY ONE FOR DETERMINATION BY WAY OF ARBITRATION AND THAT THE LATTER IS ONE THAT FALLS WITHIN THE PURVIEW OF THE BOARD'S JURISDICTION (SEE CANADIAN CAR FORT WILLIAM DIVISION HAWKER SIDDELEY CANADA LTD. CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1966, P. 763). THE BOARD HAS ALSO RECOGNIZED THAT ITS DETERMINATION AS TO WHETHER OR NOT A PERSON IS AN EMPLOYEE FOR PURPOSES OF THE ACT IS NOT NECESSARILY THE SAME AS DETERMINATION AS TO WHETHER THAT PERSON IS INCLUDED IN A DEFINED BARGAINING UNIT. WHILE A PERSON MAY BE AN EMPLOYEE FOR THE PURPOSES OF THE ACT, THAT SAME PERSON MAY NOT BE AN EMPLOYEE WHO IS INCLUDED IN A BARGAINING UNIT. CONVERSELY, EVEN THOUGH THE BOARD FINDS THAT A PERSON IS NOT AN EMPLOYEE FOR PURPOSES OF THE ACT, THAT PERSON MAY FALL WITHIN THE DESCRIPTION OF A BARGAINING UNIT CONTAINED IN A COLLECTIVE AGREEMENT (SEE MANNESMANN TUBE COMPANY LIMITED CASE, BOARD FILE NO. 11552-65-M).

7. IT HAS BEEN ARGUED, HOWEVER, THAT A DETERMINATION AS TO WHETHER OR NOT A PERSON IS AN EMPLOYEE FOR PURPOSES OF THE ACT MAY HAVE A BEARING ON THE QUESTION AS TO WHETHER A PERSON FALLS WITHIN THE SCOPE OF A UNIT AS DESCRIBED IN AN AGREEMENT. MORE SPECIFICALLY, IN THE CITY OF ST. CATHARINES CASE, O.L.R.B. MONTHLY REPORT, JULY 1966, P. 270, THE APPLICANT SUBMITTED THAT AN ARBITRATOR IN CONSIDERING WHETHER A PERSON IS COVERED BY A COLLECTIVE AGREEMENT SOMETIMES IS CONFRONTED WITH THE QUESTION AS TO WHETHER OR NOT THAT PERSON IS OR IS NOT AN EMPLOYEE. IT WAS ARGUED THAT THAT QUESTION MUST BE REFERRED TO THE BOARD BECAUSE SECTION 1(3)(B) PROVIDES THAT "THE OPINION OF THE BOARD" IS A MATERIAL FACTOR IN ANY DETERMINATION AS TO WHETHER A PERSON IS EMPLOYED IN A "MANAGERIAL" OR "CONFIDENTIAL" CAPACITY. IN DISPOSING OF THE APPLICATION THE BOARD WAS NOT CALLED UPON TO DEAL WITH THIS ARGUMENT. IN THE SUBSEQUENT MANNESMANN TUBE LIMITED CASE (SUPRA), HOWEVER, THE BOARD, WHILE GRANTING THE RELIEF SOUGHT BY THE APPLICANT WITH RESPECT TO THE STATUS OF THE PERSONS CONCERNED FOR PURPOSES OF THE ACT, EXPRESSED THE VIEW THAT HAD THE ISSUE BEFORE THE BOARD GONE STRAIGHT TO ARBITRATION AND HAD THE ARBITRATOR DETERMINED THAT SOME PERSONS IN DISPUTE WERE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE COLLECTIVE AGREEMENT, THE ARBITRATOR IN MAKING SUCH AN AWARD WOULD NOT HAVE INFRINGED THE BOARD'S JURISDICTION. WE CONCUR IN THAT VIEW.

8. IN THE CITY OF ST. CATHARINES CASE THE BOARD EXPRESSED THE VIEW THAT BEFORE AN APPLICANT WAS ENTITLED TO RELIEF UNDER AN APPLICATION MADE PURSUANT TO SECTION 79(2) IT MUST DEMONSTRATE THAT ANY DETERMINATION MADE BY THE BOARD UNDER SECTION 1(3)(B) WOULD SERVE A USEFUL PURPOSE CONNECTED WITH THE BARGAINING RIGHTS OF THE PARTIES. IN THE TOWNSHIP OF SCARBOROUGH CASE, BOARD FILE NO. 11892-66-M, CITING THE ABOVE CASE AS AUTHORITY, THE BOARD HELD THAT RELIEF UNDER SECTION 79(2) IS NOT AVAILABLE TO AN APPLICANT WHERE THE PURPOSE OF THE APPLICATION IS TO PAVE THE

WAY FOR WHAT, IN EFFECT, IS A REQUEST FOR VOLUNTARY RECOGNITION OF A UNION AS BARGAINING AGENT FOR A GROUP OF EMPLOYEES NOT PREVIOUSLY COVERED BY A COLLECTIVE AGREEMENT, AS A SUBSTITUTE FOR A CERTIFICATE GRANTED BY THE BOARD. FURTHER, IN THE CITY OF ST. CATHARINES CASE (SUPRA), THE BOARD FOUND THAT WHERE THE OCCUPATIONAL CLASSIFICATIONS OF THE PERSONS CONCERNED HAD BEEN SPECIFICALLY EXCLUDED FROM THE BARGAINING UNIT, THE APPLICANT HAD NO REMEDY UNDER SECTION 79(2) AS NO USEFUL PURPOSE WOULD BE SERVED RELATING TO THE BARGAINING RIGHTS OF THE PARTIES.

9. IN WHAT CIRCUMSTANCES THEN DOES A DETERMINATION BY THE BOARD IN AN APPLICATION MADE UNDER SECTION 79(2) SERVE A USEFUL PURPOSE? IN THE CITY OF ST. CATHARINES CASE THE BOARD SUGGESTED THAT WHERE ITS DECISION AS TO THE STATUS OF A PERSON WOULD ASSIST THE PARTIES IN THE ADMINISTRATION OF A COLLECTIVE AGREEMENT BETWEEN THEM, AN APPLICATION UNDER SECTION 79(2) WOULD APPEAR TO BE THE APPROPRIATE REMEDY. IN THE STEEL COMPANY OF CANADA LIMITED HILTON WORKS CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1966, P. 760, THE APPLICANT, PRIOR TO MAKING AN APPLICATION UNDER SECTION 79(2) WITH RESPECT TO A NUMBER OF PERSONS, HAD ALREADY INSTITUTED A GRIEVANCE RELATING TO THE SAME PERSONS ON THE ISSUE AS TO WHETHER THESE PERSONS WERE COVERED BY A COLLECTIVE AGREEMENT WITH THE RESPONDENT. THERE HAD BEEN NO SETTLEMENT OF THE GRIEVANCE PRIOR TO THE BOARD HEARING IN THE MATTER. IN THAT CASE THE BOARD WAS OF THE OPINION THAT ANY DETERMINATIONS THAT IT MADE PURSUANT TO SECTION 1(3)(B) OF THE ACT WOULD NOT BE AN ACADEMIC EXERCISE AS THE BOARD'S FINDINGS WOULD BE A DETERMINING FACTOR FOR THE APPLICANT IN DECIDING WHETHER TO PROCEED TO ARBITRATION ON THE GRIEVANCES IT HAD ALREADY INSTITUTED. THE BOARD IN THE MANNESMANN TUBE LIMITED CASE ACKNOWLEDGED THAT THE REAL ISSUE BETWEEN THE PARTIES APPEARED TO BE WHETHER THE PERSONS CONCERNED WERE INCLUDED IN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THEM. THE BOARD ALSO ACKNOWLEDGED THAT ITS FINDINGS UNDER SECTION 1(3)(B) WERE PRELIMINARY TO AN ARBITRATION PROCEEDING WITH RESPECT TO THE PERSONS FOUND BY THE BOARD TO BE EMPLOYEES FOR THE PURPOSES OF THE ACT SO THAT A DETERMINATION COULD BE MADE WHETHER OR NOT SUCH PERSONS WERE INCLUDED IN THE BARGAINING UNIT REPRESENTED BY THE APPLICANT. THE BOARD, NEVERTHELESS, GRANTED THE APPLICANT THE RELIEF IT WAS SEEKING UNDER SECTION 79(2).

10. WE WOULD MENTION THAT IN THE STEEL COMPANY OF CANADA LIMITED CASE THE RESPONDENT MAINTAINED THAT THERE WAS NO ISSUE BETWEEN ITSELF AND THE APPLICANT AS TO WHETHER THE PERSONS CONCERNED IN THE APPLICATION WERE EMPLOYEES FOR THE PURPOSES OF THE ACT. THE RESPONDENT THEREFORE REFUSED TO TAKE ANY STAND AS TO THE EMPLOYMENT STATUS OF THESE PERSONS UNDER THE ACT. THE BOARD IN THAT CASE INTERPRETED THE RESPONDENT'S CAREFUL AVOIDANCE OF ANY ADMISSION OR DENIAL AS TO WHETHER THE PERSONS CONCERNED WERE EMPLOYEES FOR PURPOSES OF THE ACT AS INDICATING THAT THE RESPONDENT RECOGNIZED THE RELEVANCE OF THE QUESTION. IN THE MANNESMANN TUBE COMPANY LIMITED CASE THE BOARD HELD THAT THE FACT THAT THE PARTIES COULD NOT AGREE WHETHER THE PERSONS IN QUESTION WERE EMPLOYEES WITHIN THE MEANING OF THE ACT WAS CONCLUSIVE OF THE FACT THAT THE QUESTION HAD ARISEN.

11. WE COME NOW TO A CONSIDERATION OF THE FACTS OF THE INSTANT CASE. FIRST OF ALL, WE WOULD POINT OUT THAT THE RECOGNITION CLAUSE OF THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT ENCOMPASSES "ALL CLERICAL AND TECHNICAL EMPLOYEES" OF THE RESPONDENT AS DESCRIBED IN THE BOARD'S CERTIFICATE OF JANUARY 28TH, 1952. THE DESCRIPTION OF THE BARGAINING UNIT IN THE CERTIFICATE, HOWEVER, IS IN TERMS OF "ALL OFFICE AND CLERICAL EMPLOYEES". IN VIEW OF THE WORDING OF THE RECOGNITION CLAUSE OF THE AGREEMENT IT APPEARS THAT THE APPLICANT REPRESENTS ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT, WITH THE EXCEPTION OF THOSE CLASSIFICATIONS SPECIFICALLY EXCLUDED BY THE BOARD'S CERTIFICATE. WE WOULD ADD THAT THE RESPONDENT DID NOT SUGGEST THAT THE DESCRIPTION OF THE UNIT SHOULD BE INTERPRETED OTHERWISE.

12. AT THE HEARING IN THIS MATTER THE APPLICANT ACKNOWLEDGED THAT THE PERSONS ON THE SCHEDULE FILED WITH THE APPLICATION LISTED UNDER THE HEADINGS "SALES DEPARTMENT" AND "METALLURGICAL" FELL WITHIN CLASSIFICATIONS EXCLUDED FROM THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT, AND WITHDREW ITS APPLICATION WITH RESPECT TO THOSE PERSONS. IN LIGHT OF THE BOARD'S DECISION IN THE CITY OF ST. CATHARINES CASE IT WOULD APPEAR THAT THE APPLICANT, IN ANY EVENT, WAS NOT ENTITLED TO THE RELIEF UNDER SECTION 79(2) FOR THOSE PERSONS.

13. AT THE HEARING THE RESPONDENT INFORMED THE BOARD THAT OTHER PERSONS ON THE SCHEDULE FILED BY THE APPLICANT WERE EMPLOYED IN OCCUPATIONAL CLASSIFICATIONS EXCLUDED FROM THE BARGAINING UNIT. THE RESPONDENT SUBMITTED, HOWEVER, THAT IT WAS NOT PREPARED TO SPECIFY THE PERSONS OR CLASSIFICATIONS CONCERNED AS THIS WAS A MATTER FOR ARBITRATION AND WAS NOT AN ISSUE BEFORE THE BOARD. WE ACCEPT THE RESPONDENT'S SUBMISSION THAT THE QUESTION AS TO WHETHER ANY OF THE PERSONS ON THE APPLICANT'S SCHEDULE ARE COVERED BY THE COLLECTIVE AGREEMENT IS NOT BEFORE US AND THAT THE RESPONDENT IS UNDER NO OBLIGATION TO MAKE REPRESENTATIONS TO THE BOARD ON THAT QUESTION.

14. WE DO NOT ACCEPT THE RESPONDENT'S SUBMISSION, HOWEVER, THAT NO QUESTION HAS ARISEN BETWEEN THE PARTIES AS TO WHETHER THE PERSONS ON THE SCHEDULE ARE EMPLOYEES FOR PURPOSES OF THE ACT. IN THE ABSENCE OF ANY REPRESENTATIONS BY THE RESPONDENT, WE ARE NOT AWARE OF ANY PERSONS ON THE SCHEDULE WHO ARE IN OCCUPATIONAL CLASSIFICATIONS EXCLUDED FROM THE BARGAINING UNIT BY THE RECOGNITION CLAUSE OF THE COLLECTIVE AGREEMENT, OTHER THAN THOSE PERSONS WITH RESPECT TO WHOM THE APPLICANT WITHDREW ITS APPLICATION. IT MAY NEVERTHELESS BE THAT SOME OF THE PERSONS ON THE SCHEDULE FALL IN THE CATEGORIES OF "FOREMEN AND PERSONS OF EQUAL OR HIGHER RANK" OR "CHIEF CLERKS AND PERSONS OF EQUAL OR HIGHER RANK" WHICH IS THE LINE OF MANAGEMENT DESIGNATED IN THE RECOGNITION CLAUSE. IN THIS CONNECTION WE WOULD POINT OUT THAT EXCEPT FOR THE VARIATION IN THE DESCRIPTION OF THE BARGAINING UNIT REFERRED TO IN PARAGRAPH 11, THE RECOGNITION CLAUSE IN THE AGREEMENT INCORPORATES THE BOARD'S CERTIFICATE OF JANUARY 28TH, 1952. THIS CERTIFICATE, WE WOULD ADD, WAS BASED ON A FINDING BY

THE BOARD AND NOT UPON THE AGREEMENT OF THE PARTIES. IT HARDLY NEED BE SAID THAT THE BOARD WOULD NOT INCLUDE IN ANY BARGAINING UNIT PERSONS WHO FOUND WERE EMPLOYED IN "MANAGERIAL" OR "CONFIDENTIAL" CAPACITIES WITHIN THE MEANING OF THE ACT. IT THEREFORE FOLLOWS THAT A DETERMINATION BY THE BOARD AS TO THE EMPLOYMENT STATUS UNDER THE ACT OF PERSONS ON THE SCHEDULE WITH RESPECT TO WHOM THERE MAY BE A DISPUTE BETWEEN THE PARTIES UNDER THE ABOVE QUOTED EXCLUSIONS FROM THE BOARD'S CERTIFICATE IS HIGHLY RELEVANT. ACCORDINGLY, TO DENY THAT THE ISSUE HAS EVEN ARISEN IS NOT SUPPORTABLE.

15. ONE OF THE EXCEPTIONS FROM THE BARGAINING UNIT DESCRIBED IN THE BOARD'S CERTIFICATE IS "PERSONS WITH AUTHORITY EFFECTIVELY TO RECOMMEND CHANGES IN THE EMPLOYMENT STATUS OF EMPLOYEES". (WE WOULD ADD THAT THE BOARD FOR MANY YEARS HAS REFUSED TO GRANT SUCH A GENERAL TYPE OF EXCLUSION FROM BARGAINING UNITS BECAUSE OF THE OBVIOUS DIFFICULTIES OF IDENTIFYING THE PERSONS CONCERNED). AS THE BOARD HAS STATED IN PREVIOUSLY CITED CASES, IT IS CONCEIVABLE THAT PERSONS FOUND BY THE BOARD TO BE EMPLOYEES FOR PURPOSES OF THE ACT MAY STILL FALL WITHIN AN EXCLUSION FROM A BARGAINING UNIT AND THE CONVERSE MAY ALSO BE THE CASE. NEVERTHELESS, PARTICULARLY WITH THE ABOVE TYPE OF EXCLUSION, A DETERMINATION BY THE BOARD UNDER SECTION 1(3)(B) OF THE ACT WOULD SERVE A USEFUL PURPOSE IN THAT SUCH A DETERMINATION OBVIOUSLY IS BOUND TO INFLUENCE THE POSITIONS OF THE PARTIES SHOULD THERE BE A DISPUTE BETWEEN THEM AS TO THE EMPLOYMENT STATUS UNDER THAT EXCLUSION RELATING TO PERSONS ON THE SCHEDULE. FURTHER, IF FOR ANY REASON SUCH A DISPUTE IS TAKEN TO ARBITRATION BY WAY OF THE GRIEVANCE PROCEDURE UNDER THE COLLECTIVE AGREEMENT THE BOARD'S DETERMINATION UNDOUBTEDLY WOULD BE OF GUIDANCE TO AN ARBITRATOR IN ARRIVING AT A DECISION AS TO THE EMPLOYMENT STATUS OF THE SAME PERSONS UNDER THE COLLECTIVE AGREEMENT.

16. THE BOARD ACCORDINGLY FINDS THAT THE APPLICANT IS ENTITLED TO RELIEF UNDER SECTION 79(2) WITH RESPECT TO ALL OF THE PERSONS ON THE SCHEDULE FILED BY THE APPLICANT IN THIS APPLICATION, WITH THE EXCEPTION OF THOSE PERSONS LISTED UNDER THE HEADING "SALES DEPARTMENT" AND "METALLURGICAL" WITH RESPECT TO WHOM THE APPLICANT WITHDREW ITS APPLICATION.

17. MR. A. A. MORROW, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF THE PERSONS ON THE SCHEDULE REFERRED TO IN THE ABOVE PARAGRAPH WITH RESPECT TO WHOM THE BOARD FOUND THE APPLICANT WAS ENTITLED TO RELIEF UNDER SECTION 79(2) OF THE ACT.

DECISION OF BOARD MEMBER H. F. IRWIN: DECEMBER 15, 1966.

I DISSENT.

THE FACTS AS SET OUT IN PARAGRAPHS 1 TO 5, INCLUSIVE, OF THE MAJORITY DECISION ARE CORRECT AND DO NOT NEED REPEATING HERE.

PARAGRAPH 3 OF THE LETTER WRITTEN TO THE RESPONDENT BY THE PRESIDENT OF THE APPLICANT UNION, LOCAL 4509, UNITED STEELWORKERS OF AMERICA AND DATED MARCH 4, 1966 READS AS FOLLOWS:

"IT IS THE OPINION OF LOCAL 4509 THAT THE OCCUPANTS OF THESE POSITIONS, FOR THE MOST PART, ARE EMPLOYEES WITHIN THE MEANING OF THE ONTARIO LABOUR RELATIONS ACT, AND THAT THERE IS NO BASIS UNDER THE ACT FOR THEIR EXCLUSION FROM THE BARGAINING UNIT. CLEARLY, IF THEY ARE EMPLOYEES WITHIN THE MEANING OF THE ACT, THERE IS NO BASIS FOR THEIR EXCLUSION FROM THE BARGAINING UNIT. WE HAVE PREPARED AND HAVE ATTACHED TO THIS LETTER A LIST OF THE POSITIONS AND THE PRESENT INCUMBENTS IN QUESTION SO FAR AS WE HAVE BEEN ABLE TO ASCERTAIN THIS INFORMATION."

THIS MAKES IT ABUNDANTLY CLEAR THAT THE REAL OBJECTIVE AND THE END RESULT THE APPLICANT DESIRED TO ACHIEVE WAS TO HAVE THE 259 PERSONS NAMED IN THE SCHEDULE ATTACHED TO THE APPLICATION INCLUDED IN THE BARGAINING UNIT AS DEFINED IN THE COLLECTIVE AGREEMENT WHICH EXISTED BETWEEN THE PARTIES AT THE DATE OF THIS APPLICATION. AT THE HEARING, THE APPLICANT REQUESTED THE DELETION OF 99 NAMES FROM THE SCHEDULE LEAVING 160 PERSONS STILL IN DISPUTE.

THIS BOARD HAS RECOGNIZED AND HELD IN THE CANADIAN CAR FORT WILLIAM DIVISION HAWKER SIDDELEY CANADA LTD. CASE, O.L.R.B. MONTHLY REPORT, JANUARY, 1966, P. 763, THAT THE QUESTION WHETHER A PERSON IS BOUND BY A COLLECTIVE AGREEMENT SHOULD BE DETERMINED BY ARBITRATION. IN THE INSTANT CASE, THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES CONTAINS A PROCEDURE TO BE FOLLOWED IN PROCESSING SUCH DIFFERENCES AS REQUIRED UNDER THE PROVISIONS OF SECTION 34 OF THE ACT AND IT SHOULD BE FOLLOWED.

THE ISSUE AS TO WHICH OF THE 160 PERSONS STILL IN DISPUTE ARE INCLUDED IN THE BARGAINING UNIT WILL PROBABLY BE DETERMINED TO A LARGE EXTENT UNDER THIS PROCEDURE WITHOUT HAVING TO MAKE ANY DECISION AS TO WHETHER THEY ARE EMPLOYEES FOR THE PURPOSES OF THE ACT. FOR INSTANCE, EMPLOYEES DESIGNATED AS AND PERFORMING THE FUNCTIONS OF GRADUATE ENGINEERS, ENGINEERS-IN-TRAINING, CHEMISTS, METALLURGISTS, DRAFTSMEN, NURSES, EMPLOYEES IN THE GENERAL MANAGER'S AND WORKS MANAGER'S OFFICES, SALES STAFF, COST ANALYST, ASSISTANT STOREKEEPER, TRANSPORTATION SHIPPER, SENIOR STATISTICS CLERK, AND EMPLOYEES WORKING AT OTHER THAN THE WILDE AVENUE PLANT ARE EXCLUDED FROM THE BARGAINING UNIT REGARDLESS OF WHETHER THEY ARE EMPLOYEES WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. A PRIOR DECISION BY THIS BOARD AS TO WHETHER OR NOT THEY ARE EMPLOYEES WOULD NOT ASSIST THE ARBITRATION BOARD ONE iota AND WOULD BE A WASTE OF TIME AND INVOLVE THE PARTIES IN UNNECESSARY EXPENSE.

IF, SUBSEQUENTLY, THE ARBITRATION BOARD INFORMS THE PARTIES THAT IT CANNOT MAKE A FINAL DETERMINATION AS TO WHETHER ANY EMPLOYEE OR GROUP OF EMPLOYEES NAMED IN THE SCHEDULE ARE BOUND BY THE COLLECTIVE AGREEMENT UNTIL THIS BOARD HAS RULED IF THEY ARE EMPLOYEES FOR THE PURPOSES OF THE ACT, AN APPLICATION UNDER SECTION 79(2) OF THE ACT COULD BE MADE AT THAT TIME. THIS BOARD COULD THEN PROCEED TO MAKE THE REQUESTED DETERMINATIONS WITH THE KNOWLEDGE THAT ITS FINDINGS WOULD SERVE A NECESSARY AND USEFUL PURPOSE.

IN THESE CIRCUMSTANCES, IT IS PREMATURE FOR THIS BOARD AT THIS TIME TO ENTERTAIN THIS APPLICATION AND AUTHORIZE AN EXAMINER TO ENQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF ANY OF THE 160 DISPUTED PERSONS REFERRED TO ABOVE.

FOR THESE REASONS, I WOULD DISMISS THE APPLICATION.

INDEXED ENDORSEMENTS - SECTION 79(A)

12399-66-M: UNITED DAIRY AND CREAMERY WORKERS' UNION, LOCAL 493, CHARTERED BY THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION OF AMERICA, AFL:CIO:CLC. (TRADE UNION) v. KRAFT FOOD LIMITED OF BERWICK, ONTARIO (EMPLOYER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: H. BUCHANAN FOR THE TRADE UNION, AND W. M. TEMPLE, J. K. MULCAIR AND L. L. SWAIN FOR THE EMPLOYER.

DECISION OF THE BOARD: DECEMBER 9, 1966.

1. THIS IS A REFERENCE TO THE BOARD BY THE MINISTER OF LABOUR, PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT, OF THE QUESTION WHETHER THE TRADE UNION HAS GIVEN PROPER NOTICE TO BARGAIN TO THE EMPLOYER PURSUANT TO SECTION 40 OF THE LABOUR RELATIONS ACT OR ANY OTHER PROVISION OF THE ACT.
2. THE EVIDENCE DISCLOSES THAT ON AUGUST 17TH, 1966, THE BUSINESS AGENT OF THE TRADE UNION MAILED TO THE EMPLOYER, BY ORDINARY MAIL, A LETTER INDICATING THAT NEGOTIATIONS FOR RENEWAL OF THE COLLECTIVE AGREEMENT THEN IN EFFECT BETWEEN THE PARTIES WOULD BE SOUGHT. SUCH A LETTER, ASSUMING THAT IT CONSTITUTED NOTICE TO BARGAIN, WAS SENT WITHIN THE PERIOD PRESCRIBED IN THE COLLECTIVE AGREEMENT FOR THE GIVING OF SUCH NOTICE. SECTION 85(1) OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:-

FOR THE PURPOSES OF THIS ACT AND OF ANY PROCEEDINGS TAKEN UNDER IT, ANY NOTICE OR COMMUNICATION SENT THROUGH HER MAJESTY'S MAILS SHALL BE PRESUMED, UNLESS THE CONTRARY IS PROVED,

TO HAVE BEEN RECEIVED BY THE ADDRESSEE IN THE
ORDINARY COURSE OF MAIL.

3. THE EVIDENCE FURTHER DISCLOSES THAT THE ABOVE LETTER, MAILED BY THE BUSINESS AGENT OF THE TRADE UNION, WAS NOT IN FACT RECEIVED BY THE EMPLOYER. IN THE LIGHT OF THIS EVIDENCE, THE PRESUMPTION RAISED BY SECTION 85 OF THE ACT DOES NOT APPLY. ON THIS POINT, REFERENCE MAY BE MADE TO THE TAYLOR WOODROW INSTALLATIONS CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1966, P. 772.

4. THE BUSINESS AGENT OF THE TRADE UNION SENT A NOTICE TO BARGAIN FOR THE RENEWAL OF THE COLLECTIVE AGREEMENT TO THE EMPLOYER ON SEPTEMBER 24TH, 1966, AND THIS NOTICE WAS RECEIVED BY THE EMPLOYER. THIS NOTICE, HOWEVER, WAS NOT GIVEN WITHIN THE TIME SET OUT IN THE COLLECTIVE AGREEMENT. THE RELEVANT PROVISION OF THE COLLECTIVE AGREEMENT IS AS FOLLOWS:-

ARTICLE XIII

EFFECTIVE DATE AND TERM AGREEMENT

THIS AGREEMENT SHALL BECOME EFFECTIVE NOVEMBER 4TH, 1964, AND SHALL CONTINUE IN FULL FORCE AND EFFECT UNTIL NOVEMBER 3RD, 1966.

THIS AGREEMENT SHALL AUTOMATICALLY RENEW ITSELF UNLESS NOTICE OF INTENT TO TERMINATE OR AMEND SAID AGREEMENT AS OF NOVEMBER 3RD 1966 OR NOVEMBER 3RD OF ANY YEAR THEREAFTER, IS GIVEN BY EITHER PARTY AT LEAST SIXTY DAYS PRIOR TO NOVEMBER 3RD 1966 OR NOVEMBER 3RD OF ANY YEAR THEREAFTER.

THE NOTICE IN QUESTION WAS GIVEN LESS THAN SIXTY DAYS PRIOR TO NOVEMBER 3RD, 1966.

5. SECTION 40 OF THE LABOUR RELATIONS ACT IN EFFECT AT THE MATERIAL TIMES PROVIDES IN PART AS FOLLOWS:-

40.-(1) EITHER PARTY TO A COLLECTIVE AGREEMENT MAY, WITHIN THE PERIOD OF TWO MONTHS BEFORE THE AGREEMENT CEASES TO OPERATE, GIVE NOTICE IN WRITING TO THE OTHER PARTY OF ITS DESIRE TO BARGAIN WITH A VIEW TO THE RENEWAL, WITH OR WITHOUT MODIFICATIONS, OF THE AGREEMENT THEN IN OPERATION OR TO THE MAKING OF A NEW AGREEMENT.

(2) A NOTICE GIVEN BY A PARTY TO A COLLECTIVE AGREEMENT IN ACCORDANCE WITH PROVISIONS IN THE AGREEMENT RELATING TO ITS TERMINATION OR RENEWAL SHALL BE DEEMED TO COMPLY WITH SUBSECTION 1.

6. THE COLLECTIVE AGREEMENT, BY ITS TERMS, WOULD HAVE CEASED TO OPERATE ON NOVEMBER 3RD, 1966. NOTICE TO BARGAIN FOR RENEWAL OF THE AGREEMENT WAS GIVEN BY THE TRADE UNION ON SEPTEMBER 24TH, 1966. CLEARLY, THIS NOTICE WAS GIVEN WITHIN THE TIME PRESCRIBED IN SECTION 40(1) OF THE ACT. THIS IS SO, NOTWITHSTANDING THE FACT THAT, HAD NOTICE BEEN GIVEN WITHIN THE PERIOD PROVIDED FOR IN THE COLLECTIVE AGREEMENT, SUCH NOTICE WOULD HAVE BEEN DEEMED TO COMPLY WITH SECTION 40(1), BY VIRTUE OF THE PROVISIONS OF SECTION 40(2) OF THE ACT.

7. THE PROVISIONS OF THE COLLECTIVE AGREEMENT IN THIS REGARD ARE SIMILAR TO THOSE OF THE COLLECTIVE AGREEMENT WITH WHICH THE BOARD DEALT IN THE WALFOODS LIMITED CASE, (1958) C.C.H. CANADIAN LABOUR LAW REPORTER, ¶16,113. THE BOARD THERE HELD THAT, WHERE A COLLECTIVE AGREEMENT, BY ITS TERMS, WAS "RENEWED" IN THE ABSENCE OF NOTICE TO BARGAIN, THE AGREEMENT CAME TO AN END, CEASED TO OPERATE (IN THE LANGUAGE OF SECTION 40) AND THAT A NEW AGREEMENT CAME INTO EXISTENCE AT THE FIXED POINT OF TIME. THE BOARD THERE RELIED UPON THE REASONING IN THE HIELD BROTHERS LIMITED CASE, (1957) C.C.H. CANADIAN LABOUR ALAW REPORTER, ¶16,072.

8. FOR THE REASONS GIVEN IN THE CITED CASES, THE BOARD IS OF OPINION THAT PROPER NOTICE TO BARGAIN WAS GIVEN BY THE TRADE UNION TO THE EMPLOYER PURSUANT TO SECTION 40 OF THE ACT.

9. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER IS AS FOLLOWS:-

THE TRADE UNION HAS GIVEN PROPER NOTICE
TO BARGAIN TO THE EMPLOYER PURSUANT TO
SECTION 40 OF THE LABOUR RELATIONS ACT.

12400-66-M: UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA AND ITS LOCAL #241 (TRADE UNION) V. BRANTFORD CONCRETE PIPE COMPANY LIMITED (EMPLOYER).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: J. PERNA AND O. H. FERGUSON FOR THE TRADE UNION, WARREN K. WINKLER FOR THE EMPLOYER.

DECISION OF J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN:
DECEMBER 15, 1966.

1. THIS IS A REFERENCE FROM THE MINISTER PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT. THE QUESTION FOR DETERMINATION BY THE BOARD IS WHETHER THE TRADE UNION IS ENTITLED TO GIVE NOTICE OF ITS DESIRE TO BARGAIN TO THE EMPLOYER PURSUANT TO SECTION 47A OF THE ACT.

2. THE TRADE UNION WAS CERTIFIED AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF SEAFORTH CONCRETE PIPE LIMITED (HEREINAFTER REFERRED TO AS SEAFORTH) ON JULY 6TH, 1965. ALTHOUGH THE TRADE UNION AND SEAFORTH ENTERED INTO NEGOTIATIONS, NO COLLECTIVE AGREEMENT WAS EXECUTED BY THE PARTIES PRIOR TO SEAFORTH'S GOING INTO RECEIVERSHIP IN DECEMBER OF 1965. ON DECEMBER 22ND, 1965, SEAFORTH DISCONTINUED ITS MANUFACTURING OPERATION OF CONCRETE PIPE AT BRANTFORD, SHUT DOWN ITS PLANT AND TERMINATED THE EMPLOYMENT OF ALL OF ITS EMPLOYEES.

3. ON DECEMBER 28TH, 1965 CHARTERHOUSE CANADA LIMITED WHICH WAS A SECURED CREDITOR UNDER A DEBENTURE WITH A FLOATING CHARGE, APPOINTED A RECEIVER WHO IMMEDIATELY TOOK POSSESSION OF ALL OF THE ASSETS OF SEAFORTH. DURING THE SIX MONTH PERIOD SEAFORTH WAS UNDER RECEIVERSHIP, THE PLANT REMAINED IDLE. ONE OF THE CHARTERED BANKS WAS ASSIGNED THE INVENTORY AND RECEIVABLES BY THE RECEIVER IN PART PAYMENT OF SEAFORTH'S INDEBTEDNESS TO THE BANK. THE BANK FROM TIME TO TIME SOLD MATERIALS AND OTHER ITEMS FROM THE PLANT AND THE RECEIVER ATTEMPTED TO SELL PHYSICAL ASSETS OF THE COMPANY, ON A PIECEMEAL BASIS.

4. BY LETTER DATED MAY 5TH, 1966, A T. L. JOHNSON MADE THE FOLLOWING OFFER TO THE RECEIVER:

THIS OFFER TO PURCHASE THE LAND AND BUILDINGS AND ALL OF THE EQUIPMENT AND INSTALLATIONS OF SEAFORTH PIPE CO. LTD. LOCATED AT BRANTFORD, ONTARIO, IS MADE TO YOU AS RECEIVER FOR THE ABOVE COMPANY.

THE OFFER IS AS FOLLOWS:

- FOR THE LAND AND BUILDINGS, THE SUM OF \$65,000 TO BE PAID IN CASH ON THE CLOSING DATE.
- FOR ALL OF THE EQUIPMENT AND INSTALLATIONS, THE SUM OF \$185,000 TO BE PAID IN DEBENTURES AND/OR PREFERRED AND COMMON STOCK OF A COMPANY TO BE INCORPORATED TO PURCHASE THE ASSETS, AND IN A FORM TO BE MUTUALLY AGREED BETWEEN THE UNDERSIGNED AND CHARTERHOUSE CANADA LIMITED.

THIS OFFER SHALL BE CONDITIONAL ON SATISFACTORY FINANCIAL ARRANGEMENTS BEING MADE BETWEEN THE UNDERSIGNED PARTY AND CHARTERHOUSE CANADA LIMITED TO COMPLETE THE TRANSACTION. THE CLOSING DATE OF THE TRANSACTION SHALL BE MUTUALLY ARRANGED, BUT SHALL NOT BE LATER THAN JUNE 30, 1966.

BY LETTER DATED MAY 9TH, 1966, THE RECEIVER ACCEPTED THE OFFER IN THE FOLLOWING TERMS:

WE HEREBY ACCEPT YOUR OFFER DATED MAY 5, 1966 FOR THE LAND, BUILDINGS AND EQUIPMENT LOCATED AT THE

COMPANY'S PREMISES IN BRANTFORD, ONTARIO.

PLEASE ADVISE IF YOU WISH TO CLOSE THE TRANSACTION PRIOR TO JUNE 30, 1966.

5. ON JUNE 20TH, 1966, BRANTFORD CONCRETE PIPE COMPANY LIMITED (THE EMPLOYER) WAS INCORPORATED AS AN ONTARIO COMPANY FOR THE PURPOSE OF BARGAINING IN THE MANUFACTURE OF CONCRETE PIPE. THE LAND AND BUILDINGS WERE CONVEYED TO THE EMPLOYER, IN ACCORDANCE WITH THE TERMS SET OUT IN THE LETTER OF MAY 5TH, BY DEED REGISTERED ON JUNE 29TH, 1966. BY A BILL OF SALE EXECUTED ON JUNE 27TH, 1966 THE OWNERSHIP OF THE EQUIPMENT AND INSTALLATIONS WAS ALSO TRANSFERRED TO THE EMPLOYER.

6. THE EMPLOYER COMMENCED TO PRODUCE CONCRETE PIPE EARLY IN JULY OF 1965. ONLY ONE FORMER EMPLOYEE OF SEAFORTH, WHO HAD BEEN EMPLOYED BY THE RECEIVER TO ACT AS A CARETAKER OF THE PREMISES DURING THE PERIOD OF THE RECEIVERSHIP, WAS HIRED BY THE EMPLOYER.

7. WE WOULD MAKE REFERENCE TO THE D.H.I. LIMITED CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1964, P. 237, IN WHICH THE BOARD FOUND THAT THERE WAS A SALE OF A BUSINESS UNDER SECTION 47A. IN THAT CASE, AS IN THE INSTANT CASE, THERE WAS A DEFAULT OF PAYMENT ON A DEBENTURE CHARGED AGAINST THE ENTIRE BUSINESS OF A COMPANY. IN ACCORDANCE WITH THE TERMS OF A DEBENTURE A RECEIVER WAS APPOINTED. IN THAT CASE, HOWEVER, D.H.I. LIMITED ACQUIRED SUBSTANTIALLY THE WHOLE UNDERTAKING AND ASSETS OF THE DEFAULTING COMPANY INCLUDING ALL GOODWILL CONNECTED WITH THE BUSINESS, ALL CONTRACTS AND AGREEMENTS FOR THE SUPPLY OF GOODS AND PERFORMANCE OF SERVICES INCLUDING UNFILLED ORDERS, WORK IN PROGRESS IN CONNECTION WITH PURCHASES AND UNFILLED ORDERS FOR THE SUPPLY BY OTHERS OF RAW MATERIAL. IN ADDITION D.H.I. ASSUMED AMONG OTHER LIABILITIES, ALL UNPAID WAGES AND SALARIES OF THE EMPLOYEES OF THE DEFAULTING COMPANY. MOREOVER, THE MANUFACTURING OPERATION CONTINUED WITHOUT INTERRUPTION, D.H.I. TAKING OVER THE BUSINESS AS A GOING CONCERN. AS WELL, D.H.I. RETAINED THE SERVICES OF ALL OF THE EMPLOYEES OF THE DEFAULTING COMPANY.

8. THE ESSENTIAL FACTS OF THE INSTANT CASE ARE CLEARLY DISTINGUISHABLE FROM THOSE IN THE ABOVE CITED CASE. IN THE TRANSACTION BETWEEN THE RECEIVER AND THE EMPLOYER, THE EMPLOYER DID NOT ACQUIRE AS PART OF THE PURCHASE PRICE ANY OF THE INVENTORY, STOCK-IN-TRADE, CUSTOMER LISTS OR GOODWILL OF SEAFORTH. MOREOVER, THE EMPLOYER DID NOT TAKE OVER THE BUSINESS OF SEAFORTH AS A GOING CONCERN, THE PLANT HAVING BEEN SHUT DOWN AND UNDER RECEIVERSHIP FOR A PERIOD OF SIX MONTHS. RATHER, THE EMPLOYER ONLY ACQUIRED, BY PURCHASE, THE PHYSICAL PLANT OF SEAFORTH, THAT IS THE LAND, BUILDINGS, EQUIPMENT AND INSTALLATIONS.

9. HAVING REGARD TO THE NATURE OF THE TRANSACTION AS OUTLINED ABOVE, THE BOARD FINDS THAT THERE HAS ONLY BEEN A SALE OF ASSETS IN THE INSTANT CASE. THE BOARD ACCORDINGLY FINDS THAT THERE HAS NOT BEEN A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT. THEREFORE, THE ANSWER TO THE QUESTION REFERRED TO THE BOARD FOR DETERMINATION IS THAT THE TRADE UNION IS NOT ENTITLED TO GIVE NOTICE OF ITS DESIRE TO BARGAIN TO THE EMPLOYER PURSUANT TO THE PROVISIONS OF SECTION 47A OF THE ACT.

DECISION OF BOARD MEMBER P. J. O'KEEFE:

DECEMBER 15, 1966.

I DISSENT.

ON THE BASIS OF THE EVIDENCE BEFORE THE BOARD, I FIND THAT THE TRANSACTION IN THE INSTANT CASE CONSTITUTES THE SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE ACT. ACCORDINGLY, IN ANSWER TO THE QUESTION REFERRED TO THE BOARD, I WOULD HAVE HELD THAT THE TRADE UNION WAS ENTITLED TO GIVE NOTICE OF ITS DESIRE TO BARGAIN TO THE EMPLOYER.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION

12517-66-R: BOOT AND SHOE WORKERS' UNION AFFILIATED WITH C.L.C.A.F. OF L. C.I.O. (APPLICANT) V. THE BREITHAUPT LEATHER COMPANY LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: K. SCOTT FOR THE APPLICANT, R. G. MEUNIER FOR THE RESPONDENT, E. SKINKLE FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: DECEMBER 30, 1966.

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT HASTINGS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. AT THE HEARING IN THIS MATTER ERNEST SKINKLE, AN EMPLOYEE OF THE RESPONDENT, APPEARED AND CLAIMED TO REPRESENT A GROUP OF EMPLOYEES WHO WISHED TO SUBMIT A STATEMENT OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION. SKINKLE REQUESTED THAT THE BOARD EXTEND THE TERMINAL DATE IN ORDER TO GIVE THE EMPLOYEES AN ADEQUATE OPPORTUNITY TO FILE THEIR STATEMENT OF DESIRE WITH RESPECT TO THE APPLICATION.

5. THREE COPIES OF THE NOTICE TO EMPLOYEES OF THE APPLICATION (FORM 5) WERE SENT BY THE REGISTRAR BY REGISTERED MAIL DATED DECEMBER

12TH, 1966 TO THE OFFICE OF THE RESPONDENT AT HASTINGS, THE LOCATION OF THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION. THE REPRESENTATIVE OF THE RESPONDENT AT THE HEARING INFORMED THE BOARD THAT THE PLANT MANAGER AT HASTINGS HAD FORWARDED ALL OF THE MATERIAL RECEIVED FROM THE BOARD TO THE RESPONDENT'S HEAD OFFICE AT KITCHENER. THE KITCHENER OFFICE IN TURN HAD RETURNED THE NOTICE TO EMPLOYEES TO THE MANAGER AT HASTINGS FOR POSTING. THE RETURN OF POSTING CARD FILED BY THE APPLICANT STATES THAT THE ACTUAL POSTING OF THE NOTICE TOOK PLACE ON DECEMBER 19TH. THE REPRESENTATIVE OF THE APPLICANT CONFIRMED THIS FACT AT THE HEARING.

6. A TYPEWRITTEN STATEMENT OF DESIRE DATED DECEMBER 20TH, 1966 BEARING THE SIGNATURE OF SKINKLE AND 29 OTHER PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT WAS SENT TO THE BOARD BY REGISTERED MAIL ON DECEMBER 22ND, 1966. THE STATEMENT HAVING BEEN MAILED TO THE BOARD BY REGISTERED MAIL AFTER THE TERMINAL DATE OF DECEMBER 20TH, 1966, THE REGISTRAR FOLLOWING HIS USUAL PRACTICE RETURNED THE STATEMENT TO SKINKLE.

7. HAVING CONSIDERED ALL OF THE CIRCUMSTANCES IN THIS CASE THE BOARD ACCEDES TO THE REQUEST MADE BY SKINKLE TO EXTEND THE TERMINAL DATE. IN ARRIVING AT THIS DECISION, THE BOARD HAS TAKEN INTO ACCOUNT THE FACT THAT THE POSTING OF THE NOTICE TO EMPLOYEES OF THE APPLICATION ONLY TOOK PLACE A DAY PRIOR TO THE TERMINAL DATE. IN THIS CONNECTION, WE NOTE THAT THE BARGAINING UNIT CONCERNED IN THE APPLICATION IS COMPOSED OF MORE THAN 50 EMPLOYEES. MOREOVER, THERE IS EVIDENCE BEFORE THE BOARD TO INDICATE THAT A GROUP OF EMPLOYEES HAS ENDEAVOURED TO FILE A STATEMENT OF DESIRE IN ACCORDANCE WITH THE PROCEDURE SET OUT IN FORM 5. AS WELL, THE REQUEST FOR THE EXTENSION OF THE TERMINAL DATE HAS BEEN MADE BY AN EMPLOYEE PURPORTING TO REPRESENT A GROUP OF EMPLOYEES. FINALLY, THERE IS NO EVIDENCE TO SUGGEST THAT DELAY IN POSTING WAS BY DESIGN OR CULPABLE CARELESSNESS ON THE PART OF THE RESPONDENT. THE TERMINAL DATE ACCORDINGLY IS EXTENDED, FOR ALL PURPOSES, TO JANUARY 6TH, 1967.

8. WE WOULD STRESS, HOWEVER, THAT THE BOARD IS ONLY PREPARED TO GRANT AN EXTENSION OF THE TERMINAL DATE IN ANY APPLICATION IN EXTRAORDINARY CIRCUMSTANCES, WHERE TO DO OTHERWISE MIGHT UNFAIRLY AFFECT THE POSITION OR RIGHTS OF PARTIES OR PERSONS HAVING AN INTEREST IN THE PROCEEDING. WE WOULD ADD THAT WHERE ANY PARTY OR PERSONS HAVE FAILED TO FULFIL ANY OBLIGATION UPON THEM WHICH ADVERSELY AFFECTS THEIR POSITION THE BOARD WILL NOT PERMIT THE PARTY OR PERSONS CONCERNED TO GAIN BY THEIR OWN SHORTCOMINGS. IT HARDLY NEED BE SAID THAT IF THE TERMINAL DATE ESTABLISHED IN PROCEEDINGS COULD, WITH FACILITY, BE EXTENDED, THE DISRUPTION TO THE BOARD'S PROCEDURES AND THE RESULTING HARDSHIPS TO ALL PARTIES IS NOT DIFFICULT TO ENVISAGE.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

12494-66-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. JOHN VANDERVIES (RESPONDENT).

5. THE RESPONDENT APPEARS TO BE A SMALL CONTRACTOR WHO ENGAGES IN THE CONSTRUCTION, REPAIR AND RE-MODELLING OF COMMERCIAL AND RESIDENTIAL BUILDINGS. IT FURTHER APPEARS THAT THE RESPONDENT EMPLOYS ONLY CARPENTERS AND LABOURERS AND SUB-CONTRACTS OUT WORK TO BE PERFORMED BY ANY OTHER TRADE. AT THE PRESENT TIME, THE RESPONDENT HAS FOUR CARPENTERS AND TWO LABOURERS IN ITS EMPLOY. IT HAS BEEN THE PRACTICE OF THE APPLICANT TRADE UNION TO ORGANIZE ON AN "ALL EMPLOYEE" RATHER THAN ON A CRAFT BASIS AND THE BOARD HAS FOR SOME YEARS RECOGNIZED THIS PRACTICE IN ITS CERTIFICATES ISSUED TO THE APPLICANT. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS IT IS OUR VIEW THAT THE GRANTING OF AN ALL EMPLOYEE UNIT IN THIS CASE WOULD NOT LIKELY LEAD TO ANY WORK ASSIGNMENT DISPUTE. IN THESE CIRCUMSTANCES, THEREFORE, THE BOARD FINDS FURTHER THAT ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(DECEMBER 14, 1966).

12509-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. DRAKE CONSTRUCTION Co. LTD. (RESPONDENT).

6. THE JOB INVOLVED IN THIS APPLICATION IS THE CONSTRUCTION OF A CAUSEWAY. IN CONNECTION THEREWITH, EARTH IS BEING MOVED FROM TWO LOCATIONS TO BACK-FILL AN OLD CANAL. THE CANAL IS SITUATED IN THE TOWNSHIP OF EDWARDSBURGH IN THE COUNTY OF GRENVILLE. SOME OF THE EARTH, FOR BACK-FILLING IS OBTAINED IN THE SAME TOWNSHIP. HOWEVER, EARTH IS ALSO OBTAINED IN THE TOWNSHIP OF MATILDA IN WHAT WAS FORMERLY THE COUNTY OF DUNDAS. IN RECENT CASES, THE BOARD HAS HELD THAT THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY FORM AN APPROPRIATE GEOGRAPHIC AREA. IT IS THUS APPARENT THAT THE JOB INVOLVED IN THIS APPLICATION IS PARTIALLY WITHIN AN ESTABLISHED BOARD AREA AND PARTIALLY WITHOUT THAT AREA. HAVING REGARD TO THE ABOVE CONSIDERATIONS AND IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, THE BOARD FINDS FURTHER THAT ALL EMPLOYEES OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY AND IN THE TOWNSHIP OF EDWARDSBURGH, IN THE COUNTY OF GRENVILLE, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(DECEMBER 16, 1966).

12529-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA,
LOCAL 2486 (APPLICANT) V. W. A. McDougall Ltd. (RESPONDENT).

4. THE JOB SITE AFFECTED BY THIS APPLICATION IS AT LITTLE CURRENT ON MANITOULIN ISLAND. THE APPLICANT HAD APPLIED FOR THE DISTRICT OF MANITOULIN WITH THE EXCEPTION OF BOARD AREA #17. THERE IS NO GENERAL PATTERN OF BARGAINING AMONG TRADE UNIONS AND EMPLOYERS FROM WHICH IT CAN BE INFERRED THAT THE AREA PROPOSED BY THE APPLICANT IS AN APPROPRIATE GEOGRAPHIC AREA. AT THE PRESENT TIME, THE BOARD HAS NOT INCLUDED THE DISTRICT OF MANITOULIN IN ANY APPROPRIATE GEOGRAPHIC AREA AND IT IS NOT PREPARED TO ESTABLISH A NEW GEOGRAPHIC AREA IN THIS CASE. AS A PURELY INTERIM MEASURE, HOWEVER, THE BOARD FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF MANITOULIN EXCEPT THAT PORTION OF THE DISTRICT OF MANITOULIN WITHIN A THIRTY-FIVE MILE RADIUS OF THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(DECEMBER 30, 1966).

STATISTICAL TABLES FOR DECEMBER 1966

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	DECEMBER 1966	1ST 9 MONTHS OF FISCAL YEAR 1966-67	1965-66
I. CERTIFICATION	51	706	745
II. DECLARATION TERMINATING BARGAINING RIGHTS	5	30	47
III. DECLARATION OF SUCCESSOR STATUS	-	9	17
IV. DECLARATION THAT STRIKE UNLAWFUL	7	26	42
V. DECLARATION THAT LOCK-OUT UNLAWFUL	-	1	4
VI. CONSENT TO PROSECUTE	11	70	79
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	7	82	83
VIII. MISCELLANEOUS	<u>8</u>	<u>51</u>	<u>39</u>
TOTAL	<u>89</u>	<u>975</u>	<u>1056</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	DECEMBER 1966	1ST 9 MONTHS OF FISCAL YEAR 1966-67	1965-66
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	70	700	900

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY MAJOR TYPES

	NUMBER DISPOSED OF		
	DECEMBER 1966	1ST 9 MONTHS OF 1966-67	FISCAL YR. 1965-66
I. CERTIFICATION	58	743	761
II. DECLARATION TERMINATING BARGAINING RIGHTS	1	26	52
III. DECLARATION OF SUCCESSOR STATUS	1	9	10
IV. DECLARATION THAT STRIKE UNLAWFUL	4	21	40
V. DECLARATION THAT LOCK- OUT UNLAWFUL	1	1	4
VI. CONSENT TO PROSECUTE	1	54	74
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	10	92	89
VIII. MISCELLANEOUS	<u>7</u>	<u>52</u>	<u>60</u>
TOTAL	<u>83</u>	<u>998</u>	<u>1090</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>DECEMBER 1ST 9 MTHS FISCAL YR.</u>			<u>DECEMBER 1ST 9 MTHS FISCAL YR.</u>		
	<u>1966</u>	<u>1966-67</u>	<u>1965-66</u>	<u>1966</u>	<u>1966-67</u>	<u>1965-66</u>
<u>I. CERTIFICATION</u>						
GRANTED	42	546	567	1263	15573	14838
DISMISSED	9	133	127	266	10304	8444
WITHDRAWN	7	64	67	110	925	3361
TOTAL	<u>58</u>	<u>743</u>	<u>761</u>	<u>1639</u>	<u>26802</u>	<u>26643</u>
<u>II. TERMINATION</u>						
<u>OF BARGAINING</u>						
<u>RIGHTS</u>						
GRANTED	1	15	24	32	494	1294
DISMISSED	-	11	25	-	279	765
WITHDRAWN	-	-	3	-	-	119
TOTAL	<u>1</u>	<u>26</u>	<u>52</u>	<u>32</u>	<u>773</u>	<u>2178</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATION FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>DECEMBER 1ST 9 MONTHS FISCAL YEAR</u>		
		<u>1966</u>	<u>1966-67</u>	<u>1965-66</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	1	3	7
	DISMISSED	-	-	4
	WITHDRAWN	<u>3</u>	<u>18</u>	<u>29</u>
	TOTAL	<u>4</u>	<u>21</u>	<u>40</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	4
	WITHDRAWN	<u>1</u>	<u>1</u>	<u>-</u>
	TOTAL	<u>1</u>	<u>1</u>	<u>4</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	-	7	29
	DISMISSED	-	9	14
	WITHDRAWN	<u>1</u>	<u>38</u>	<u>31</u>
	TOTAL	<u>1</u>	<u>54</u>	<u>74</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED

OF BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	DECEMBER 1ST 9 MTHS FISCAL YEAR 1966	1966-67	1965-66
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	1	14	21
POST-HEARING VOTE	1	29	25
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	1	9	6
POST-HEARING VOTE	3	48	26
BALLOTS NOT COUNTED	-	-	2
TOTAL	<u>6</u>	<u>100</u>	<u>80</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF

BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	DECEMBER 1ST 9 MTHS FISCAL YEAR 1966	1966-67	1965-66
*RESPONDENT UNION SUCCESSFUL	-	4	1
RESPONDENT UNION UNSUCCESSFUL	<u>1</u>	<u>12</u>	<u>19</u>
TOTAL	<u>1</u>	<u>16</u>	<u>20</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

BINDING SECT. APR 7 1972



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